

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1192

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

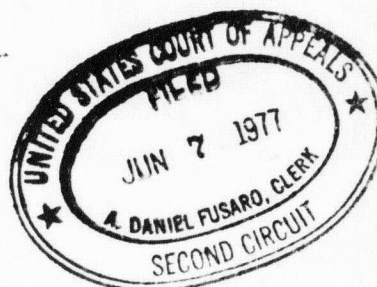
UNITED STATES OF AMERICA,

Plaintiff-Appellee,

against

JOSE ROSA, JOSE VEGA AND
RAFAEL A. RODRIGUEZ,

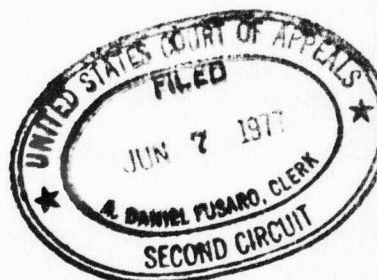
Defendants-Appellants.



Bp/s

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK

APPENDIX



Charles P. Sifton, Esq.
Attorney for Defendant-Appellant
Jose Rosa
140 Broadway
New York, New York 10005

David Blackstone, Esq.
Attorney for Defendant-Appellant
Rafael A. Rodriguez
401 Broadway
New York, New York 10013

The Legal Aid Society
by Edward Chase, Esq.
Attorney for Defendant-Appellant
Jose Vega
15 Park Row
New York, New York 10038

Robert B. Fiske, Jr.
United States Attorney for the
Southern District of New York
Attorney for Plaintiff-Appellee
United States of America
1 St. Andrew's Plaza
New York, New York 10007

PAGINATION AS IN ORIGINAL COPY

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01 - ROSA, JOSE a/k/a Jose Miguel
Rosa Ortiz

07 15 76 0655 01

D861

(LAST, FIRST, MIDDLE)

JUVENILE

03

OFFENSES CHARGED
Consp. to viol. Fed. Narco. Laws.
Possess. & distr. of Heroin I.

ORIGINAL COUNTS

1

2, 3

U.S. MAG
CASE NO 76-412

RECORDS

☐ Fugitive
☒ Pass. Recd.
☐ PSA

Date 4/1/76
☒ 10% Deposit
☐ Surety Bond

☐ Bail Not Made
☐ Status Changed (See Decree)
☐ Collateral
☐ 3rd
☐ Pmt Cust
☐ Other

SUPERSEDING
COUNTS

INTERVALS

INDICTMENT X

ARRAIGNMENT

TRIAL

Indict. Waived
In Charging District

7-22-76
7-22-76

1-10-77
1-13-77
1-13-77

SENTENCE

Disposition
1-13-77 3-3-77

☒ Convicted
☐ Acquitted
☐ Dismissed
☐ On Government Motion
☐ On All Charges
☒ On Lesser
☐ WOP
☐ WP

MAGISTRATE

INITIAL/NO
HJR-080D

OUTCOME

☐ DISMISSED
☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

INITIAL APPEARANCE DATE 4/1/76
PRELIMINARY EXAMINATION OR REMOVAL HEARING
☐ REMOVAL HEARING
☐ WAIVED
☒ NOT WAIVED
☐ INTERVENING INDICTMENT

DATE 4/1/76
INITIAL/NO HJR-080D

21 USC 812, 841(a)(1) and 841(b)(1)(A) - NARCOTICS

ATTORNEYS

Defense: ☒ CJA ☒ Ret. ☐ Waived ☐ Self ☐ None / Other: ☐ PD ☐ CD

John Siffert
Alan Levine
791-0932-1922

Elliot H. Wales
122 E. 42nd St.
New York, NY

LeBoeuf, Lamb, Leiby & MacRae
140 Broadway-NYC 10005 (269-1100)

-31

Show last names and suffix numbers of other defendants on same indictment/information.

02-VEGA, 03-RODRIGUEZ

PROCEEDINGS

EXCLUDABLE DELAY
(a) (b) (c) (d)

4/1/76

Complaint filed, Elliot H. Wales, Esq., 122 E. 42nd St., N.Y. assigned, Defendant released on bail, address: 244 E. 106th St., N.Y.; depositor: Nereida Ramon, same address.
Indictment filed, 76 Cr. 655

7/15/76

7-22-76

Def. and Atty. not present. Court directs entry of not guilty. Mot. ret. in 10 days. P.T.C. set for 8/20/76, Bail fixed in the sum of \$1,000. P.R.B. sec. by \$100. continued. (Trial days (0-5))
Case assigned to Judge Conner for all purposes.
Conner, J.

7-23-76

Filed the following papers received from Mag. Raby. (Mag. No. 76-412) criminal complaint, SDNY, disposition sheet, financial affidavit, Appearance Bond in the sum of \$1,000.00-100.00 CASH) and appointment of counsel, Elliot Wales, 122 East 42nd St. NYC 10017 682-6806.

8-12-76

Filed notice of appearance by LeBoeuf, Lamb, Leiby & MacRAE, 140 B'way, NYC 10005 (269-1100)

A-1

09-23-76 Filed affdvt. & notice of motion for an order suppressing all physical evidence seized....Ret. 9-30-76.....

09-30-76 Deft. & atty. present..Suppression hearing -decision reserved. Conner, J.....

10-15-76 Filed Deft's Memorandum of Law in support of his motion to suppress.

10-26-76 Filed Govts supplemental memorandum of law in opposition to motions to suppress..

11-10-76 Filed memorandum and order. Upon defts motions to suppress prosecution evidence derived from a search and seizure that attended their arrest, and evidentiary hearing was held.*** For the reasons discussed above, defts. motions are denied in all respects...mailed notice to all parties....

11-12-76 Deft. present with atty's. Interpreter Richard Schoen sworn. Motion to suppress...DENIED. Pre-trial conf. set for Nov.24-76 at 9:30 A.M.....Conner, J...

11-12-76 Filed Govts memorandum of law.

11-12-76 Filed defts memorandum in support of motion to suppress.

12-2-76 Filed Govt's Notice of Readiness for Trial.

12-13-76 Filed transcript of record of proceedings dated:9-30-76.

12-17-76 Filed affdvt. and notice of motion for an order dismissing the indictment.. RET. 01-10-77.

12-17-76 Filed memorandum of law in support of motion.

*11-24-76 Deft & atty present-Interpreter Richard Schoen sworn. Trial date set for Jan.10,1977. at 10A.M.CONNER,J

1-5-77 Deft & atty present.Interpreter Richard Schoen sworn for deft Rosa. Waiver of Trial by Jury -GRANTED. Deft Cont'd on Bail. CONNER,J

1-13-77 Deft & atty.present..SUPPRESSION hearing..Decision..Deft GUILTY in Ct.2 P.S.I. ordered adjd to 2-24-77 9:30 a.m. deft to report or call pre-trial service once a week..All defts cont'd. on present bail..Interpreter Richard Schoen, sworn...Conner, J.

2-1-77 Filed transcript of record of proceedings, dated 1-13-77

3-1-77 Filed sentencing memorandum of a behalf of deft.

3 9-30-76

CONTINUED ON PAGE NO. 3.

FINE AND RESTITUTION PAYMENTS					
DATE	RECEIPT NUMBER	CD NUMBER	DATE	RECEIPT NUMBER	CD NUMBER

ROSA, JOSE a/k/a Jose Miguel
Rosa Ortiz

76 0655
Yr. Docket No. De:

PROCEEDINGS (continued)

CONNER, J

V. EXCLUDABLE DELA
(a) (b) (c) (d)

3-3-77 Filed Judgment-Through Interpreter Richard Schoen.
Atty. Charles P. Sifton, present) The defendant
is committed for imprisonment for a period of
THREE (3) YEARS, on Count 2. Defendant is
placed on Special Parole for a term of THREE
(3) YEARS, to commence upon the expiration of
his confinement pursuant to the provision of
Title 21, U.S. Code, Section 841. Counts 1 and
2 are dismissed on motion of defendant's counsel,
with the consent of the Government.
Bail continued pending appeal.
COMMITMENT RECOMMENDATION-Defendant shall par-
ticipate in a methadone detoxification program
and receive such counselling as the Bureau of
Prisons deems appropriate. CONNER, J

Entered on-3-4-77.

Issued commitment and copies.

3-7-77 Filed NOTICE OF APPEAL of deft/ from judgment filed
3-3-77. copy to attys for deft LeFoeuf, Lamp, Leiby
and MacRae, 140 Broadway, NYC 10005-copy to US. Attorney.

3-10-77 Filed CJA Form 21 COPY 2 approving payment to Richard
Schoer, 33 Hollywood Avenue, Lynbrook, New York 11563.
Dated: 3-4-77. CONNER, J (mailed copy 1 to AO)

3-10-77 Filed CJA Form 21 COPY 5 authorizing the expert service
of Richard Schoer. Dated: 3-4-77 CONNER, J (mailed copy 4 to AO)

3-18-77 Filed Notice that original record on appeal has been
Certified and transmitted to the USCA 2nd Circuit
this day.

3-17-77 Filed transcript record of proceedings dtd: 3-3-77

5-19-77 Filed transcript of record of proceedings dated: 7-22-76.

5-19-77 Filed transcript of record of proceedings dated: 11-24-76.

Y OFFENSE PO	JUDGE/MAGISTRATE Assigned	U S	02- VEGA, JOSE a/k/a	Case Filed	76	0655	02
R OFFENSE MO	0861	vs	Jose Hernandez	M	07 15		
DEMEANOR Mis	0208 01	Disp./Sentence		Day of Filing	03		
FELONY Fel	District Office	(LAST, FIRST, MIDDLE)		Case No.			

U.S. TITLE SECTION
21:846
21:812, 841

OFFENSES CHARGED
Consp. to viol. Fed. Narco. Laws.
Possess. & distr. of Heroin J.

ORIGINAL COUNTS
1
2, 3

U.S. DIST. COURT
CASE NO. 76-412

Defendant
Set
X Pers. Recog
P.A.

S 1,
4/1/76
X 10% Deposit
Surety Bond
Bail Not Made
Collateral
Status Changed
Pty Cust
Other

II. KEY DATES & INTERVALS

ARREST of	12:00 noon 3/31/76	7-15-76	1-10-77	1-13-77	4-21-77
Summons Served					
First Appearance					
Indictment					
Charging District					

Search Warrant	Issued	DATE	4/1/76	INITIAL VERIFICATION	4/1/76	DISMISSED
Summons	Issued					
Arrest Warrant Issued	Served					
COMPLAINT		4/1/76	HJR-080D	4/28/76	HJR-080D	
OFFENSE (in Complaint)		21 USC- 812,841(a)(1) and 841(b)(1)(A) - NARCOTICS				

U.S. Attorney or Asst.
John Siffert
Alan Levine
791-0932 1922

ATTORNEYS
Dan Steinbock

- 1722

* Show last names and suffix numbers of other defendants of same indictment information

01-ROSA, 03-RODRIGUEZ

DATE	DOCUMENT NO.	PROCEEDING
4/1/76		Complaint filed, Legal Aid assigned. Defendant released on bail, address: 1589 E. 172nd St., Bx., N.Y., depositor: Nereida Ramon, address: 244 E. 106th St., N.Y.
7/15/76		Indictment filed, 76 Cr. 655
7-22-76		Def. and atty. not present. Court directs entry of not guilty plea. Mot. ret. in 10 days. Bail fixed in the sum of \$1,000. P.R.B. sec. by \$100. continued. Case assigned to Judge Conner for all purposes. Conner, J.
7-23-76		Filed the following papers received from Mag. Ruby (Mag. No. 76-412) criminal complaint, SDNY, disposition sheet, financial affidavit, Appearance bond in the sum of \$1,000.00-\$100.00 CASH)
9-29-76		Filed affdvt. & notice of motion to suppress physical evidence and statements.... Ret. 9-30-76..
9-30-76		Def. & atty. present.. Suppression hearing - decision reserved. 3 9-30-76 E 1 Conner, J.....

A-3a

76Cr.655 W.C.C.		IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY			
DATE	DOCUMENT NO.			Interval Start Date (a)	Start Date End Date (b)	Ltr Code (c)	Total Days (d)
10-15-76		Filed defts memorandum of law....					
10-18-76		Filed deft's supplement to brief.					
11-10-76		Filed memorandum and order. Upon defts motions to suppress prosecution evidence derived from a search and seizure that attended their arrest, an evidentiary hearing was held.*** For the reasons discussed above, deft's motions are in all respects DENIED.....CONNER,J..mailed notice to all parties.					
11-12-76		Deft. present with atty's. Interpreter Richard Schoen sworn. Motion to suppress...DENIED. Pre-trial conf. set for Nov.24-76 at 9:30 A.M.....Conner,J...					
11-12-76		Filed Govts memorandum of law.					
12-13-76		Filed transcript of record of proceedings dated:9-30-76.					
12-27-76		Filed notice of motion to dismiss indictment...Ret.1-10-77...					
*11-24-76		Deft & atty present - Interpreter Richard Schoen sworn.Trial date set for Jan.10,1977. at 10A.M. CONNER,J					
1-6-77		Filed waiver of trial by jury...Approved...Conner,J.					
1-10-77		Deft. (Atty present) Interpreter Richard Schoen sworn. Deft Vega Re:Waiver of Trial by jury - Granted Deft Vega \$1,000 P.R.B. Secured by \$100.00 CASH Cont'd Special condition of Bail that deft contact U.S.Atty or Probation Dept. weekly. Deft to notify U.S. Atty of new change of address or if deft should leave his apartment for more than a day at a time.CONNER,J					
1-10-77		Filed Waiver of Trial by Jury,Approved:CONNER,J					
1-13-77		Atty present to suppress evidence during deft's trial					
1-13-77		Deft.& atty.present..SUPPRESSION hearing..Decision..Deft GUILTY in Ct.2 P.S.I. ordered adjd to 2-24-77 9:30 a.m. deft to report or call pre-trial service once a week..All defts cont'd. on present bail..Interpreter Richard Schoen,sworn...Conner,J...					
4-11-77		Filed transcript of record of proceedings dated:1-10-77.					
3-17-77		Filed transcript record aof proceedings dtd: 3-3-77					

cont'd on page. 3.

U.S. MARSHAL SERVICE
CASE NO. **76-412**

1. ☐ Arrested ☐ Fugitive
2. ☐ Detained ☒ **X** ☐ Paroled ☐ Probation
3. ☐ Sent ☐ Released
4. ☐ **1** ☐ **2** ☐ **3** ☐ **4** ☐ **5** ☐ **6** ☐ **7** ☐ **8** ☐ **9** ☐ **10** ☐ **11** ☐ **12** ☐ **13** ☐ **14** ☐ **15** ☐ **16** ☐ **17** ☐ **18** ☐ **19** ☐ **20** ☐ **21** ☐ **22** ☐ **23** ☐ **24** ☐ **25** ☐ **26** ☐ **27** ☐ **28** ☐ **29** ☐ **30** ☐ **31** ☐ **32** ☐ **33** ☐ **34** ☐ **35** ☐ **36** ☐ **37** ☐ **38** ☐ **39** ☐ **40** ☐ **41** ☐ **42** ☐ **43** ☐ **44** ☐ **45** ☐ **46** ☐ **47** ☐ **48** ☐ **49** ☐ **50** ☐ **51** ☐ **52** ☐ **53** ☐ **54** ☐ **55** ☐ **56** ☐ **57** ☐ **58** ☐ **59** ☐ **60** ☐ **61** ☐ **62** ☐ **63** ☐ **64** ☐ **65** ☐ **66** ☐ **67** ☐ **68** ☐ **69** ☐ **70** ☐ **71** ☐ **72** ☐ **73** ☐ **74** ☐ **75** ☐ **76** ☐ **77** ☐ **78** ☐ **79** ☐ **80** ☐ **81** ☐ **82** ☐ **83** ☐ **84** ☐ **85** ☐ **86** ☐ **87** ☐ **88** ☐ **89** ☐ **90** ☐ **91** ☐ **92** ☐ **93** ☐ **94** ☐ **95** ☐ **96** ☐ **97** ☐ **98** ☐ **99** ☐ **100** ☐ **101** ☐ **102** ☐ **103** ☐ **104** ☐ **105** ☐ **106** ☐ **107** ☐ **108** ☐ **109** ☐ **110** ☐ **111** ☐ **112** ☐ **113** ☐ **114** ☐ **115** ☐ **116** ☐ **117** ☐ **118** ☐ **119** ☐ **120** ☐ **121** ☐ **122** ☐ **123** ☐ **124** ☐ **125** ☐ **126** ☐ **127** ☐ **128** ☐ **129** ☐ **130** ☐ **131** ☐ **132** ☐ **133** ☐ **134** ☐ **135** ☐ **136** ☐ **137** ☐ **138** ☐ **139** ☐ **140** ☐ **141** ☐ **142** ☐ **143** ☐ **144** ☐ **145** ☐ **146** ☐ **147** ☐ **148** ☐ **149** ☐ **150** ☐ **151** ☐ **152** ☐ **153** ☐ **154** ☐ **155** ☐ **156** ☐ **157** ☐ **158** ☐ **159** ☐ **160** ☐ **161** ☐ **162** ☐ **163** ☐ **164** ☐ **165** ☐ **166** ☐ **167** ☐ **168** ☐ **169** ☐ **170** ☐ **171** ☐ **172** ☐ **173** ☐ **174** ☐ **175** ☐ **176** ☐ **177** ☐ **178** ☐ **179** ☐ **180** ☐ **181** ☐ **182** ☐ **183** ☐ **184** ☐ **185** ☐ **186** ☐ **187** ☐ **188** ☐ **189** ☐ **190** ☐ **191** ☐ **192** ☐ **193** ☐ **194** ☐ **195** ☐ **196** ☐ **197** ☐ **198** ☐ **199** ☐ **200** ☐ **201** ☐ **202** ☐ **203** ☐ **204** ☐ **205** ☐ **206** ☐ **207** ☐ **208** ☐ **209** ☐ **210** ☐ **211** ☐ **212** ☐ **213** ☐ **214** ☐ **215** ☐ **216** ☐ **217** ☐ **218** ☐ **219** ☐ **220** ☐ **221** ☐ **222** ☐ **223** ☐ **224** ☐ **225** ☐ **226** ☐ **227** ☐ **228** ☐ **229** ☐ **230** ☐ **231** ☐ **232** ☐ **233** ☐ **234** ☐ **235** ☐ **236** ☐ **237** ☐ **238** ☐ **239** ☐ **240** ☐ **241** ☐ **242** ☐ **243** ☐ **244** ☐ **245** ☐ **246** ☐ **247** ☐ **248** ☐ **249** ☐ **250** ☐ **251** ☐ **252** ☐ **253** ☐ **254** ☐ **255** ☐ **256** ☐ **257** ☐ **258** ☐ **259** ☐ **260** ☐ **261** ☐ **262** ☐ **263** ☐ **264** ☐ **265** ☐ **266** ☐ **267** ☐ **268** ☐ **269** ☐ **270** ☐ **271** ☐ **272** ☐ **27**

1-13-77 3-3-77
X (In Alaska) X (In Alaska)
X (In Alaska) X (In Alaska)
X (In Alaska) X (In Alaska)
X (In Alaska) X (In Alaska)

John Siffert
Alan Irvine
791-0932-1922

ATTORNEYS
David Blackstone
401 Bway
New York, NY

1309

3

A-3d

DATE	76 CR. 0655- CONNER, J. PROCEEDINGS (continued) R.A. Rodriguez	PAGE TWO
8-19-76	Filed affdvt. and notice of motion for an order suppressing physical evidence seized on 3-31-76 as indicated.	
09-30-76	Deft.&Atty.present..Suppression hearing-decision reserved... Conner,J.....	5 9-30-76 E 1
11-10-76	Filed memorandum and order. Upon defts motions to suppress prosecution evidence derived from a search and seizure that attended their arrest, an evidentiary hearing was held.*** For the reasons discussed above, deft's motions are in all respects DENIED.....CONNER,J..mailed notice to all parties.	
11-12-76	Filed Govts memorandum of law.	
11-12-76	Deft. present with atty's. Interpreter Richard Schoen sworn. Motion to suppress...DENIED. Pre-trial conf. set for Nov.24-76 at 9:30 A.M.....Conner,J...	
12-13-76	Filed transcript of record of proceedings dated:9-30-76.	
*11-24-76	Deft & atty present-Interpreter Richard Schoen sworn. Trial date set for Jan. 10,1977 at 10A.M. CONNER,J	
1-5-77	Deft & Atty. present.Interpreter Richard Schoen sworn for deft Rosa. Waiver of Trial by Jury-GRANTED. Deft Cont'd on Bail.CONNER,J	
1-6-77	Filed Waiver of trial by jury...Approved: Conner,J...	
1-13-77	Deft & atty.present..SUPPRESSION hearing..Decision..Deft GUILTY in Ct.2 P.S.I.ordered adjd to 2-24-77 9:30 a.m.def't to report or call pre-trial service once a week..deft cont'd on present bail..Interpreter Richard Schoen,sworn...Conner,J....	
2-1-77	Filed transcript of record of proceedings, dated 1-5-77	
3-3-77	Filed Judgment(Atty.D.Blackstone,present)Imposition of sentence is suspended on Ct.2..Deft is placed on probation for a period of THREE YEARS,subject to the standing probation order of this Court. Cts.1 and 3 are dismissed on motion of the defts counsel, with the consent of the Govt..Special conditions of probation. Deft shall participate in such drug treatment program as is directed by the Probation Dept. That deft shall continue his schooling or make every reasonable effort to obtain and retain employment.....Conner,J....Bail cont'd. pending appeal Ent.3-4-77	
3-9-77	Issued commitment and copies..... Filed notice of appeal from judgmt.dated 3-3-77 copy given to U.S.Att'y. and mailed to defts atty. D.Blackstone 401 B'Way NYC	

CONTINUED ON PAGE NO. 3

A-3e

DATE	PROCEEDINGS (continued)	V. EXCLUDA (a) (b)
3-24-77	(Document No.) Filed CJA Form 20 COPY 2 approving payment to David Blackstone, 401 Broadway NYC 10013-226-6684 Dated: 3-24-77 CONNER, J (mailed orig CJA Copy 1 to AO Wash. D.C.)	
3-17-77	Filed transcript record of proceedings dtd: 3-3-77	
5-19-77	Filed transcript of record of proceedings dated: 7-22-76.	
5-19-77	Filed transcript of record of proceedings dated: 11-24-76.	

AL:jrs
M-1825

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LESCHE, LANE, LINDY & McRAE
RECORDS DEPT.

UNITED STATES OF AMERICA :

- v - :

JOSE ROSA, a/k/a Jose Miguel
Rosa Ortiz, JOSE VEGA, a/k/a
Jose Hernandez, and RAFAEL A.
RODRIGUEZ,

Defendants. :

INDICTMENT

76 Cr.

COUNT ONE

The Grand Jury charges:

1. From on or about the 1st day of March, 1976, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, JOSE ROSA, a/k/a Jose Miguel Rosa Ortiz, JOSE VEGA, a/k/a Jose Hernandez, and RAFAEL A. RODRIGUEZ, the defendants and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, wilfully and knowingly would distribute and possess with intent to distribute Schedule I narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841 (b) (1)(A) of Title 21, United States Code.

SERVED _____ BY _____
RECEIVED _____ BY _____
☐ HAND ☐ MAIL
FILED _____ BY _____
ALL & MENTAY 7/10/76

DOCUMENT NO. /

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about March 31, 1976 defendants JOSE ROSA a/k/a Jose Miguel Rosa Ortiz, and JOSE VEGA, a/k/a Jose Hernandez, had a meeting.

2. On or about March 31, 1976 defendants JOSE ROSA, a/k/a Jose Miguel Rosa Ortiz, JOSE VEGA, a/k/a Jose Hernandez, and RAFAEL A. RODRIGUEZ met in the vicinity of 244 East 106th Street, New York, New York.

3. On or about March 31, 1976, while in the vicinity of apartment 9 of 244 East 106th Street, New York, New York defendants JOSE ROSA a/k/a Jose Miguel Rosa Ortiz, JOSE VEGA, a/k/a Jose Hernandez, and RAFAEL A. RODRIGUEZ possessed approximately 241.92 grams of heroin hydrochloride.

4. On or about March 31, 1976, while in the vicinity of apartment 9 of 244 East 106th Street, New York, New York, defendant RAFAEL A. RODRIGUEZ possessed approximately 60.73 grams of heroin hydrochloride.

(Title 21, United States Code, Section 846.)

AL:sr
N-1625

COUNT TWO

The Grand Jury further charges:

On or about the 31st day of March, 1976, in the Southern District of New York, JOSE ROSA, a/k/a Jose Miguel Rosa Ortiz, JOSE VEGA, a/k/a Jose Hernandez, and RAFAEL A. RODRIGUEZ, the defendants, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 241.92 grams of heroin hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1), and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT THREE

The Grand Jury further charges:

On or about the 31st day of March, 1976, in the Southern District of New York, JOSE ROSA, a/k/a Jose Miguel Rosa Ortiz, JOSE VEGA, a/k/a Jose Hernandez, and RAFAEL A. RODRIGUEZ, the defendants, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 60.78 grams of heroin hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

FOREMAN _____

ROBERT B. FISKE, JR.
United States Attorney

9-22-76

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LoBOEUR, LAMB, LEIBY & MacRAE
RECORDS DEPT.

----- x
UNITED STATES OF AMERICA, :

- against - :

JOSE ROSA, a/k/a Jose Miguel :
Rosa Ortiz, JOSE VEGA, a/k/a :
Jose Hernandez, and RAFAEL A. :
RODRIGUEZ, :

76 Cr. 655

NOTICE OF MOTION

Defendants.
----- x

S I R S:

PLEASE TAKE NOTICE that upon the annexed affidavit of Charles P. Sifton, the undersigned will move this Court before the Honorable William C. Conner in the United States Courthouse for the Southern District of New York, located at Foley Square, New York City, at a hearing to be held on September 30, 1976 in Room 506 at 9:00 A.M. in the forenoon, or as soon thereafter as counsel may be heard, for an order pursuant to Rules 12(b)(3) and 41 of the Rules of Criminal Procedure suppressing all physical evidence seized from the defendant and from his apartment, and statements made by said defendant, on the ground that such evidence was illegally taken and seized in violation of Rules 4 and 41 of the Rules of Criminal

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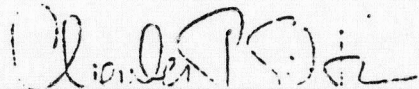
Procedure, Title 21, United States Code, and defendant's rights under the First, Fourth and Fifth Amendments to the United States Constitution.

Dated: New York, New York
September 23, 1976

Yours, etc.

LeBOEUF, LAMB, LEIBY & MacRAE

By



(A Member of the Firm)

Attorneys for Defendant Jose Rosa
Office and P.O. Address
140 Broadway
New York, New York 10005

TO: ALL COUNSEL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA, :

- against - :

JOSE ROSA, a/k/a Jose Miguel :

Rosa Ortiz, JOSE VEGA, a/k/a :

Jose Hernandez, and RAFAEL A. :

RODRIGUEZ, :

Defendants. :

----- x

76 Cr. 655

AFFIDAVIT IN SUPPORT
OF AN APPLICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

CHARLES P. SIFTON, being duly sworn, deposes and says:

1. I am court assigned counsel for the defendant, Jose Rosa, and submit this affidavit in support of said defendant's application for an order seeking suppression of certain physical evidence illegally seized from the defendant and from the defendant's apartment on March 31, 1976, and statements made by said defendant to government representatives at or after such seizure.

2. As appears from the court file in this case, defendant Rosa was arrested in his apartment at 204 E. 106th Street, New York City, on March 31, 1976, without a warrant having been issued either for his arrest or for the search

of his apartment. (Defendant Rosa's proprietary interest in the apartment is attested to in his Financial Affidavit in Support of his Request for Attorney, sworn to April 1, 1976, which reflects his \$125 a month rent obligation with respect to the premises searched.)

3. The complaint, sworn to and filed subsequent to defendant Rosa's arrest, describes the basis on which the defendant was arrested and his apartment searched as follows:

"The bases for deponent's knowledge and for the foregoing charge are, in part, as follows:

"1. Investigations in the course of official duties.

"2. On March 31, 1976, an informant who had previously provided reliable information told a brother agent in my group that he had been present when two individuals named Jose had purchased one eighth of a kilogram of heroin on March 30, 1976, at 244 E. 106 Street, top floor. The two individuals told the informant that they would sell this heroin in the early hours of March 31, 1976.

"3. On March 31, 1976, deponent and other agents entered the apartment at 244 E. 106 Street and found the defendants Rosa, Vega and Rodriguez. Rosa stated that he had a quantity of narcotics, and produced approximately three ounces (gross weight) of heroin contained in retail packages. Deponent also found in the apartment approximately \$5,000 in cash and (in the living room) numerous narcotics paraphernalia, such as mixing agents and spoons. The defendant Vega was found sleeping in the living room; under his pillow was a gun. Deponent also arrested the defendant Rodriguez and found in his possession a package of approximately one-quarter ounce of heroin.

"Wherefore, deponent prays that a warrant may issue for the apprehension of the above named defendants and that they may be arrested and imprisoned, or bailed, as the case may be."

4. On its face, the complaint demonstrates the absence of any probable cause for the arrest or search.

(a) Prior to the arrest, the only connection between defendant Rosa and the persons involved in the secondhand report concerning a narcotics purchase and anticipated sale were a similar (and exceedingly common) first name "Jose", a friend also named "Jose", and a building address shared with the persons observed by the informant;

(b) The complaint does not allege that the arresting officer was ever informed of the information concerning the alleged purchase and anticipated sale as a result of which the defendant was presumably arrested.

On the basis of the complaint alone, the evidence seized and statements taken should be suppressed.

5. Further, the complaint fails to demonstrate any exigent or exceptional circumstances justifying arrest and search without a warrant. Assuming defendant Rosa to be one of the Jose's referred to in the secondhand report mentioned in the complaint, on the face of the complaint he was unaware of the surveillance and of the anonymous informant's status, since the informant anticipated a further sale of the narcotics. No threat of flight or of destruction of evidence was thus presented, even if such a threat would justify (which it does

A-11

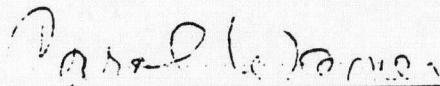
not) the invasion of a man's home and privacy at gunpoint.

6. Information furnished me by the United States Attorney's Office pursuant to my request states that certain physical evidence, numbered Exhibits 1-11, A-F, was seized and a statement taken from defendant Rosa as a result of the illegal entry and search.

WHEREFORE, it is respectfully requested that Exhibits 1-11, A-F and the statement taken from defendant Rosa be suppressed pursuant to Rules 12(b)(3) and 41 of the Federal Rules of Civil Procedure and that defendant have such other and further relief as is appropriate.


CHARLES P. SIFTON

Sworn to before me this
23rd day of September, 1976.


Notary Public

CAROL WAGNER
Notary Public, State of New York
No. 31-4120745
Qualified in New York County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
UNITED STATES OF AMERICA, :
- against - :
JOSE ROSA, a/k/a Jose Miguel : 76 Cr. 655
Rosa Ortiz, JOSE VEGA, a/k/a : AFFIDAVIT OF SERVICE
Jose Hernandez, and RAFAEL A. :
RODRIGUEZ, :
Defendants. :
----- x

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

CAROL WAGNER, being duly sworn, deposes and says:

She is above the age of 18 years, resides at 2277 Home-
crest Avenue, Brooklyn, New York, and is not a party to this
action.

On the 23rd day of September, 1976 in the forenoon, she
caused the annexed Notice of Motion and Affidavit in Support of
an Application to be served on plaintiff United States of America,
through its attorney, by depositing true copies thereof enclosed
in a securely sealed postpaid wrapper in a regularly maintained
United States Postal Service letter box located in the lobby of
140 Broadway, City, County and State of New York, addressed as
follows: Alan Levine, Esq., Assistant United States Attorney,
Southern District of New York, Room 936, United States Courthouse
Annex, One St. Andrew's Plaza, New York, New York.

Deponent further says that at the time of said mailing she knew the within name and address to be correct from prior papers and proceedings heretofore had.

Carol Wagner
CAROL WAGNER

Sworn to before me this

23rd day of September, 1976.

Earl Mack, Jr.
Notary Public

EARL MACK, JR.
Notary Public, State of New York
Residing in Queens County
Queens Co. Clk's No. 41-4607329
Certificate Filed in
New York Co. Clk's
Commission Expires March 30, 1977

LEBOEUF, LAMB, LEIBY & MACRAE
RECORDS DEPT.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA,

Plaintiff,

- against -

JOSE ROSA, a/k/a "Jose Miguel Rosa
Ortiz," JOSE VEGA, a/k/a "Jose
Hernandez," and RAFAEL H. RODRIGUEZ,

Defendants.
----- X

X

: 76 Crim. 655
(WCC)

: MEMORANDUM
: AND ORDER

A P P E A R A N C E S :

HONORABLE ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for the United States
of America
One St. Andrew's Plaza
New York, New York 10007

JOHN S. SIFFERT, ESQ.,
Assistant United States Attorney,
Of Counsel

LeBOEUF, LAMB, LEIBY & MACRAE, ESQS.
Attorneys for Defendant Rosa
140 Broadway
New York, New York 10005

CHARLES P. SIFTON, ESQ.,
MICHAEL J. WILLIAMS, ESQ.,
Of Counsel

DOCUMENT No. 10

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LLL & MENTRY 11-10-78 BY *LLM*

A-15

WILLIAM J. GALLAGHER, ESQ.
Federal Defender Services Unit
The Legal Aid Society
Attorney for Defendant Vega
15 Park Row
New York, New York 10038

EDWARD T. CHASE, ESQ.,
Of Counsel

DAVID BLACKSTONE, ESQ.
Attorney for Defendant Rodriguez
401 Broadway
New York, New York 10013

CONNER, D. J.:

Defendants in the above-captioned criminal action have been indicted on one count of conspiracy to violate federal narcotics laws, 21 U.S.C. §§ 812, 841(a)(1), (b)(1)(A), and two counts of heroin possession with intent to distribute, 21 U.S.C. §§ 812, 841(a)(1), (b)(1)(A) and 18 U.S.C. § 2. Upon defendants' motions to suppress prosecution evidence derived from a search and seizure that attended their arrest, an evidentiary hearing was held by this Court on September 30, 1976. The testimony adduced at that hearing will be traced in relevant portion below.

It must be noted, at the outset, that the accounts of those who testified for the Government -- the sole witnesses at the hearing -- were neither wholly consistent inter se nor in all respects uniform with prior statements reflected in the

exhibits before the Court. The discrepancies so noted -- minor for the most, if not the whole, part -- have been resolved by assessment of the witnesses' demeanor, candor, experience, and intelligence.

I.

On March 31, 1976, at approximately 8:00 A.M., a confidential informant registered with the Federal Drug Enforcement Agency (the DEA) alerted DEA Special Agent Richard Fiano, apparently by telephone, to a distribution of heroin projected for that morning. At approximately 9:30 A.M., DEA Special Agents Michael Levine, Emilio Garcia, and Robert Joura joined Fiano in an interview of the informant at DEA headquarters. The informant at that time reiterated the narrative that he had previously related to Fiano, i.e., that he had been in the company of one Pipo and one Angel (subsequently identified as, respectively, defendants Rosa and Vega) at the Rios Piedro Social Club, on 105th Street in Manhattan, during the early morning hours of the same day; that he had there observed Pipo's receipt -- from a fourth, unidentified, party -- of approximately one-eighth kilogram of heroin; and that he had been told by Pipo that the drug would be prepared in the latter's apartment for purposes of distribution and would be placed "on the street" by about 11:00 A.M., or at least no later than midday. The informant additionally reported that,

during his visit to Pipo's apartment on the preceding day, he had observed on the premises large sums of money and a number of guns, among which was a .38 caliber revolver belonging to Angel.

Having been apprised of at least so much, Levine, the Acting Group Supervisor, outlined a plan for the arrest of the alleged drug traffickers. As an implement of that plan, the confidential informant was outfitted with an electronic signalling device, concealed on his person, and was instructed to use an alternate, "fail-safe" signal in the event that the electronic device were to malfunction; Levine and Joura, for their part, donned the garb of priests.

Apart from such matters of guise and disguise, the logistics of the operation were simple enough. Levine, Garcia, Joura, and Fiano -- accompanied by the informant and with several additional DEA agents in tow -- left DEA headquarters between 10:30 and 10:40 A.M. and drove toward 244 East 106th Street, the address of Pipo's residence. At some point en route, Garcia directed the informant to telephone that residence with the message that he was "on his way"; after having done so, the informant reported to the agents that he had spoken to Pipo, who had indicated that others were asleep in the apartment. Arriving within view of the targeted address at approximately 11:15 A.M., the agents took up positions for the purpose of surveillance. The informant, alone and on foot,

proceeded toward, and disappeared from the agents' sights into, Pipo's apartment building. It would be an hour or more until Garcia was to spy a motion at Pipo's living room window, the prearranged contingent signal indicating that the informant had seen drugs in the apartment.

Thus, it was sometime between noon and 12:30 P.M. that Levine, Garcia, and Joura -- followed by their brother agents -- sped quietly up the stairs to the top floor of 244 East 106th Street. From the informant's earlier description, the agents recognized an aluminum-fronted door, to the right of the stairwell, as the entrance to Apartment 9, Pipo's railroad flat. The door was several inches ajar; Garcia and Joura would later recall that someone appeared to have been repairing the door or working on its replacement. Levine, in the lead, observed on a kitchen table, just beyond the threshold of the apartment, "glassine type bags and * * * metallic paper."

With revolvers in hand and shields displayed, the agents strode past the partially opened door into the Rosa kitchen, there confronting defendants Rosa and Rodriguez, Rosa's wife, and two unidentified individuals. While Garcia and Levine guarded the persons discovered in the kitchen, Joura proceeded to the living room. There he found defendant Vega asleep on a couch. As Joura pulled Vega to his feet, a .38 caliber "police special" that had been covered by the pillow on which Vega's head had been resting was in turn dislodged and fell to

the floor. Taking control of both the revolver and its owner, Joura directed Vega to the kitchen. By that time, the other agents had joined Levine and Garcia in a search of the individuals who had been placed under arrest in the kitchen.

As a result of the initial search, a pouch containing heroin was removed by Agent Fiano from Rodriguez' jacket pocket. It was at this juncture that Rosa declared, "Everything here is mine. It's all mine. Whatever you find here is mine, you got me good." Garcia thereupon recited the full litany of Miranda warnings, in Spanish, to the congregation of Spanish-speaking arrestees.

When asked by Levine whether there was additional contraband in the apartment, Rosa responded -- in substance, if not in haec verba -- "You have to let everybody else go and just don't tear the house up and I will show you what I got." With that, Rosa led Garcia and Levine to a bedroom dresser and opened one of the dresser drawers, disclosing in the process a box containing packets of heroin and a variety of drug-associated paraphernalia. Asked by Garcia for permission to "look around a little closer," Rosa replied, "As long as you don't break the place up." Rosa then directed the agents to a paper bag concealed behind the living room couch; the bag contained a large sum of money. Rosa next guided the agents to a metal box that was secreted within a stereo unit built along a bedroom wall; the cache included what were, in the above-described

context, the apparent accouterments of narcotics processing, i.e., strainers, measuring spoons, a toothbrush, and a small blender. The agents seized, in addition to the aforementioned items, miscellaneous papers found atop the bedroom dresser; also seized, thereafter, were papers found among defendants' personal effects during the ordinary course of processing at DEA headquarters.

II.

Familiar principles supply the measure of defendants' challenges to the legality of the March 31, 1976 arrests and the searches and seizures that followed in their wake. Thus, we begin from the premise that an arrest is legal only if it is founded on probable cause -- knowledge of such facts as would prompt a reasonable and prudent man to the belief that a crime has been committed or is in progress. Beck v. Ohio, 379 U.S. 89, 91 (1964). The existence or absence of probable cause in turn depends upon a miscellany of circumstances and perforce cannot be gauged with mathematical precision. As the Supreme Court has observed, "In dealing with probable cause, * * * we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men * * * act." Brinegar v. United States, 338 U.S. 160, 175 (1949).

As noted above, the arrests in the present case were prompted by an informant's tip. Probable cause, in such circumstance, must turn on a demonstration (1) that the informant was known by the arresting agents to be reliable and (2) that "the informant either detailed the manner in which the information was gathered or sufficiently described the underlying circumstances so that [the agents] could reasonably believe that the suspect[s were] engaged in criminal activity." United States v. Edmonds, 535 F.2d 714, 719 (2d Cir. 1976).

With respect to the second line of inquiry, this Court is satisfied that the informant's description of the scenario at the Rios Piedro and his report of Pipo's confidences to him were enough to excite the reasonable and prudent to the conclusion that narcotics were being readied for sale at 244 East 106th Street, Apartment 9. As for the informant's credibility, this Court is satisfied as well that the agents' reliance on the informant's word was reasonably founded. By the time of defendants' arrests -- "the crucial moment for determining the existence of probable cause," United States v. Smith, 308 F.2d 657, 663 (2d Cir. 1962) -- the informant had been known to Garcia for some six months, following his arrest for a narcotics-related offense; the subsequent identification of his source of drug supply had been confirmed by Garcia's independent investigation. The informant had, to Garcia's knowledge, furnished the New York City Police Department information that

led to the confiscation of weapons involved in the activities of a certain terrorist group. Some weeks prior to March 31, 1976, the informant had alerted Garcia to a frequency of narcotics transactions at the Rios Piedro, information independently corroborated by Garcia. Moreover, additional tips from the informant respecting drug trafficking on the Upper East Side of Manhattan had corresponded with Garcia's personal knowledge of the area. Such a record of prior trustworthiness may support a reasonable reliance on the part of law enforcement officers. See Spinelli v. United States, 393 U.S. 410 (1969); United States v. Rollins, 522 F.2d 160 (2d Cir. 1975). Finally, of course, the narcotics paraphernalia spied by Levine prior to the agents' entry into Apartment 9 bore eloquent witness to the reliability of the informant.

Thus, this is among those cases in which "[t]he cumulative effect of [an] informant's report and * * * independent [law enforcement officers'] corroboration [has been] sufficient to establish probable cause." United States v. Edmonds, *supra*, at 720. Nor is the latter conclusion undermined by the fact that the informant's identity in this case has to date remained undisclosed. In view of the facts as recited above, such non-disclosure is not fatal to the Government's position herein, whether that position be measured against the Second Circuit's most recent pronouncement on the subject, *i.e.*, that "disclosure of an informant's identity is required only when the existence of probable cause depends entirely on the reliability

of the informant," id. (emphasis in original), or by the Second Circuit's earlier observations that "disclosure [is] required only when the informant's story constituted 'the essence or core or main bulk' of the evidence brought forth which would otherwise establish probable cause'," United States v. Commissiong, 429 F.2d 834, 838-39 (2d Cir. 1970).

Notwithstanding all of the above, defendant Rodriguez urges that at least his own arrest was not bottomed on probable cause. Thus, it is argued that, "No incriminating evidence against Rodriguez was furnished by the informant to the police before the raid or on the scene after the police entered. After police [sic] entry, Rodriguez was not observed committing any crime, nor was any evidence implicating him in crime developed before he was searched." To such extent, at least, Rodriguez invites the Court to disregard the Second Circuit's sensible admonition that "courts should not require law enforcement officials to ignore what is plainly, and legitimately, before them." United States v. Rodriguez, 532 F.2d 834, 839 (2d Cir. 1976). Declining that invitation, this Court concludes that the DEA agents had reasonable enough basis to arrest Rodriguez as well as his companions. The agents had, after all, been alerted -- by the informant's earlier report -- to the probability that drug runners would be present in Apartment 9 at approximately that time. Nor did Rodriguez' stationing at the moment of the agents' entry serve to dispel a reasonable belief that he was not detached from the suspected drug enterprise.

at that moment, Rodriguez was seated at the kitchen table, the trappings of narcotics packaging before him.

III.

Defendants argue, in unison, that the agents' entry into Apartment 9 was illegal because effected without a warrant. That argument rests on a fundamental constitutional principle, i.e., that "'searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment -- subject only to a few specifically established and well-delineated exceptions'." Coolidge v. New Hampshire, 403 U.S. 443, 454-55 (1971), quoting Katz v. United States, 389 U.S. 347, 357 (1968). This is hardly the first court to observe that the exceptions to such general rule are confined within a narrow compass, accommodating only those cases in which there is "'a showing by those who seek exemption * * * that the exigencies of the situation made [a warrantless search] imperative'." Coolidge v. New Hampshire, supra, at 455, quoting McDonald v. United States, 335 U.S. 451, 456 (1949). Furthermore, it may scarcely be gainsaid that probable cause, standing alone, "does not provide the exigent circumstances necessary to justify a search without a warrant." United States v. Rubin, 474 F.2d 262, 268 (3d Cir. 1973).

On the basis of the record at bar, this Court concludes that the instant case stands among those "jealously and carefully drawn" situations, Jones v. United States, 357 U.S. 493,

499 (1958), that validate warrantless searches. For here the agents believed -- and, more to the present point, this Court is convinced of the reasonableness of their belief -- that the delay entailed in obtaining a warrant would in all likelihood have prevented them from "arresting" not defendants alone, but rather, the "destruction of the evidence" as well. Schmerber v. California, 384 U.S. 757, 770 (1966). "Destruction" in the present case would have been of the most damaging nature, that is, commercial distribution.

Although defendants argue with some vigor that a warrant might have been secured in the present case without such cost, the testimony elicited at the hearing tends to prove otherwise. Thus, according to Levine, the engineer of the March 31, 1976 operation, it had been his experience that a warrant could not be obtained in the Southern District of New York in less than four or five hours under the most efficient circumstances; under average circumstances, Levine testified, a warrant could not be had in this district in less than a day. In view of the reported imminence of the narcotics sales, Levine reasonably enough declined to initiate an application for a warrant, an application that would have been -- according to Levine's own experienced lights -- no more than a futile exercise.

With so much concluded, defendants' challenge to the admissibility of certain fruits of the March 31, 1976 search necessarily fails. Thus, the search of Rodriguez' person finds

sanction in the well-established rule that

"When an arrest is made it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. * * * . In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction." Chimel v. California, 395 U.S. 752, 763 (1969).

It is no less clear that the items found on Rosa's kitchen table and the revolver retrieved from the living room floor fall squarely within the "plain view" exception to the warrantless-search rule. In the light of this Court's earlier determination, there is no relevance here for the Coolidge Court's instruction that "where the police have ample opportunity to obtain a search warrant and the intention to seize the evidence is really the prime motive for the arrest, the plain view exception does not apply," United States v. Lisznyai, 470 F.2d 707, 710 (2d Cir. 1972), cert. denied, 410 U.S. 987 (1973). Nor can Joura's seizure of the Vega "police special" be condemned as the product of a general exploratory intrusion. Given the informant's report respecting the guns harbored in Apartment 9, and the other persons asleep there, it was reasonable caution that directed Joura to proceed through the railroad flat, to the living room at its rear, to commandeer any remaining person or persons having access to the reported weapons.

IV.

Yet to be considered is the admissibility of the remaining items found by the agents in Apartment 9. With respect to these, defendants contend, suppression is mandated by the absence of a voluntary consent to search.

This Court is mindful, as it must be, that the voluntariness of a consent to search cannot be inferred lightly, but rather, must be demonstrated by "clear and positive evidence." United States v. Smith, 308 F.2d 657, 663 (2d Cir. 1962), cert. denied, 372 U.S. 906 (1963). See Johnson v. Zerbst, 304 U.S. 458 (1938); United States v. Boukater, 409 F.2d 537 (2d Cir. 1969); United States v. Como, 340 F.2d 891 (2d Cir. 1965). Thus, on a motion to suppress, it is the Government's burden to prove that the "totality of the circumstances" reflects a consent that was "essentially free and unconstrained." United States v. Watson, 44 U.S.L.W. 4112, 4116 (U.S. January 26, 1976); Schneckloth v. Bustamonte, 412 U.S. 218 (1973); see United States v. Miley, 513 F.2d 1191, 1201-02 (2d Cir.), cert. denied, 96 Sup. Ct. 74 (1975). Furthermore, a consent is not voluntary unless it has been "unequivocal, specific, and intelligently given." United States v. Smith, supra, at 663. And, although "[t]he fact of custody does not alone preclude the giving of a voluntary consent, * * * , * * * it should require more careful scrutiny." United States v. Wiener, Docket No. 75-1218 (2d Cir. March 24, 1976).

That the above-recited guidelines are not always easily applied is unhappily demonstrated by the case at bar. After all, the search at issue transpired in a context that might ordinarily and readily be deemed inherently coercive, following as it did the sudden intrusion by armed officers into the Rosa residence. The arrests were, to be sure, speedily effected, but probably no less disquieting for such expedition.

Nonetheless, this Court is impelled to the conclusion that Rosa's consent to the search of his apartment was offered freely, knowingly, and without equivocation. That conclusion is founded, necessarily, upon the surrounding circumstances in their entirety. Although armed, the agents do not appear to have threatened Rosa, either expressly or impliedly; nor did they practice any form of deception upon him. Rather, the agents addressed Rosa in words of inquiry and request. Moreover, the Miranda warnings had been administered to Rosa in his native language. In word and action, Rosa appeared to have been alert, certainly enough so to have understood the Miranda admonition respecting his right not to incriminate himself; indeed, Rosa had summoned enough wit -- and pluck -- to condition the search upon the officers' care not to disturb his household effects unnecessarily. Added to all the above were Rosa's spontaneous declarations of guilt and his affirmative assistance in the search; as Garcia noted at the hearing, "Mr. Rosa was with us as we looked around, after he gave us consent. He was with us constantly." See United States v. Smith, supra, at 663-64.

Thus, all of the relevant evidence, as a totality, reflects a voluntary consent on Rosa's part to the search and consequent seizures.

For the reasons discussed above, defendants' motions are denied in all respects.

SO ORDERED.

William E. Conner
United States District Judge

Dated: New York, New York
November 10, 1976

① DOCKET
② FILES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- against -

JOSE ROSA, a/k/a Jose Miguel
Rosa Ortiz, JOSE VEGA, a/k/a
Jose Hernandez, and RAFAEL A.
RODRIGUEZ,

Defendants.

76 Cr. 655

NOTICE OF MOTION

S I R S:

PLEASE TAKE NOTICE that upon the annexed affidavit of Charles P. Sifton, sworn to this 17th day of December, 1976, the undersigned will move this Court, at Room 639 of the United States Courthouse, Foley Square, New York, New York, on the 10th day of January, 1977, at 10:00 A.M. in the forenoon or as soon thereafter as counsel may be heard, for an order, pursuant to Rule 12(b)(2) of the Federal Rules of Criminal Procedure, dismissing the indictment herein on the ground that the indictment fails to charge the defendant Rosa with an offense.

SERVED _____ BY _____
RECEIVED _____ BY _____
☐ HAND ☐ MAIL
FILED _____ BY _____
ALL DOCUMENTS FILED BY MG

LeBOEUF, LAMB, LEIBY & MacRAE

By

Charles P. Sifton
CHARLES P. SIFTON
(A Member of the Firm)

DOCUMENT No. 13

Attorneys for defendant
Jose Rosa
Office and P.O. Address
140 Broadway
New York, New York 10005
(212) 269-1100

A-31
NOTED ON
MCMG CMC
CALENDAR

Dated: New York, New York
December 17, 1976

TO: JOHN SIFFERT, ESQ.
Asst. U.S. Attorney
Southern District of N.Y.
One St. Andrew's Plaza
U.S. Courthouse Annex
New York, New York 10007

DAVID BLACKSTONE, ESQ.
401 Broadway
New York, New York

NED CHASE, ESQ.
Federal Defender's Office
15 Park Row, 10th Floor
New York, New York 10038

JOHN W. LEE & MACHING

.....X

A-33

"...it shall be unlawful for any person knowingly or intentionally --

"(1) to manufacture, distribute, or dispense, or process with intent to manufacture, distribute, or dispense, a controlled substance; ..."

Section 802 of the same title defines the term "controlled substance" as follows:

"The term 'controlled substance' means a drug or other substance, or immediate precursor, included in Schedule I, II, III, IV or V of Part B of this subchapter."

4. Section 812 of Title 21 provides, in pertinent part:

"There are established five schedules of controlled substances, to be known as schedules I, II, III, IV and V. Such schedules shall initially consist of the substances listed in this section. The schedules established by this section shall be updated and republished on a semi-annual basis during the two-year period beginning one year after the date of enactment of this subchapter and shall be updated and republished on an annual basis thereafter." (Emphasis supplied).

Responsibility for the administration of Section 812, including the requirement of updating and republication, is placed on the Attorney General of the United States or his delegate by Section 811 of Title 21:

"The Attorney General shall apply the provisions of this subchapter to the controlled substances listed in the schedules established by Section 812 of this title and to any other drug or any substance added to such schedules under this subchapter."

5. Section 812 was originally enacted as part of Public Law 91-513 on October 27, 1970, 84 Stat. 1247. Under the provisions of Section 812, the schedules "initially" consisting of the substances listed in that section were required to be "updated and republished on a semi-annual basis during the two-year period beginning" October 27, 1971 and ending October 27, 1973. Thereafter, in the one year period commencing October 27, 1973 and ending October 27, 1974, Section 812 required that the schedules again "be updated and republished." This was done by the Attorney General through his delegate on June 20, 1974. 39 F.R. 22141.

6. In the one year period commencing October 27, 1974 and ending October 27, 1975, Section 812 again required that the schedules "be updated and republished." However, although on May 7, 1975 and July 8, 1975 additional substances were added to Schedule I, 40 F.R. 19813, 28611, upon information and belief the schedule was not updated and republished by the Attorney General or his delegate, as required by law.

7. In the one year period commencing October 27, 1975 and ending October 27, 1976 -- the one year period encompassing the time of the offenses charged in the indictment -- Section 812 again required that the schedules established pursuant to Section 812 be updated and republished. Again, although on January 28, 1976 a further substance was added to Schedule I, 41 F.R. 4016, upon information and belief the schedules were

not updated and republished by the Attorney General or his delegate, as required by Section 812.

8. Section 7 of the Federal Register Act, 44 U.S.C. §1507, provides that:

"A document required by Section 1505(a) of this Title* to be published in the Federal Register is not valid as against a person who has not had actual knowledge of it until the duplicate originals or certified copies [have been] made available for public inspection, as provided by Section 1503 of this Title...."

9. Section 552 of Title 5 of the Administrative Procedure Act provides in relevant part:

"(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public --

"...(D) Substantive rules of general applicability adopted as authorized by law...;

"Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published."

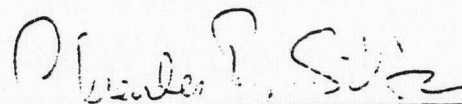
* Section 1505(a) of Title 44 provides in relevant part that:

"There shall be published in the Federal Register --

...(3) documents...that may be required so to be published by act of Congress."

Since, upon information and belief, the Attorney General or his delegate have failed to draw up the updated schedules for 1975 and 1976 which 21 U.S.C. §812 requires to be published annually, defendant Rosa cannot be shown to have actual knowledge of them. In the absence of actual knowledge both the Federal Register Act and the Administrative Procedure Act prohibit the application of the provisions of Title 21 to the defendant Rosa.

WHEREFORE, for the reasons stated herein and in the accompanying memorandum of law, it is respectfully requested that the indictment herein be dismissed and that defendant have such other and further relief as may be just.



CHARLES P. SIFTON

Sworn to before me this
17th day of December, 1976.



Notary Public

CAROL WAGNER
Notary Public, State of New York
No. 31-4120745
Qualified in New York County
Commission Expires March 30, 1977

A-37

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
UNITED STATES OF AMERICA,

- against -

JOSE ROSA, a/k/a Jose Miguel
Rosa Ortiz, JOSE VEGA, a/k/a
Jose Hernandez, and RAFAEL A.
RODRIGUEZ,

Defendants.
----- x

RECEIVED 1976, 12/17 11:10 AM

76 Cr. 655

: 76 Cr. 655

:

:

MEMORANDUM OF LAW
IN SUPPORT OF MOTION

Preliminary Statement

This memorandum of law is submitted in support of the motion of defendant Jose Rosa, pursuant to Rule 12(b) (2) of the Federal Rules of Civil Procedure, for an order dismissing the indictment herein for failure to charge an offense.

Statement
of Facts

As set forth in the affidavit of Charles P. Sifton, defendant's counsel, submitted in support of this motion, the Attorney General of the United States has failed to

update and republish the schedules of controlled substances as he is required to do on an annual basis by Title 21, United States Code §812. The Attorney General has failed to comply with this statutory requirement despite the fact that new substances have been added to Schedule I in both 1975 and 1976 -- the periods immediately preceding and including the time period of the offense charged in the indictment.

Discussion

Three Circuit Courts have been confronted with motions to dismiss indictments similar to the indictment in this case because of a failure on the part of the government to republish the schedules of controlled substances, as required by 21 U.S.C. §812, United States v. Mundt, 508 F.2d 904 (10th Cir. 1974), cert. denied, 421 U.S. 949 (1975); United States v. Infelice, 506 F.2d 1358 (7th Cir.), cert. denied, 419 U.S. 1107 (1974); United States v. Nocar, 497 F.2d 719 (7th Cir.), cert. denied, 419 U.S. 1038 (1974). In each case the court assumed that a failure to republish would render an indictment under 21 U.S.C. §§841 and 846 invalid and sustained the indictments solely because at the time of the offense charged, a valid publication was in effect.

Two subsequent District Court cases, both arising in California, have again avoided the issue of the validity of the indictment in the absence of valid republication on the

ground that no changes in the schedules had occurred since the last valid republication requiring updating. United States v. Monroe, 408 F.2d 270, 275, n. 10 (N.D. Cal. 1976); United States v. Andrews, 408 F. Supp. 1007 (N.D. Cal. 1976). Under these circumstances, the courts assumed that the government could show, on the trial, actual knowledge of the contents of the last validly published schedule and thereby avoid the effect of both the Administrative Procedure Law, 5 U.S.C. §552(a)(1)(D) and 553(b), and the Federal Register Act, 44 U.S.C. §1505. Those statutes state that where, as here, a statute requires that a document be published and it is not so published, the document can have legal validity against an individual only if he is shown to have actual knowledge of its existence. In this case, the obligation of the Attorney General to republish had clearly matured by the time of the offense charged and the addition of substances to Schedule I in the interim since the last valid publication of an updated schedule clearly required the Attorney General to establish in 1975 and 1976 an updated schedule. No such updated schedule having been created by the Attorney General, the defendant in this case cannot be shown to have had actual knowledge of it and as a result, both the Administrative Procedure Law and the Federal Register Act require dismissal of the indictment.

Conclusion

For the reasons set forth herein and in the accompanying affidavit of Charles P. Sifton, submitted herewith,

it is respectfully requested that the indictment herein
be dismissed.

Respectfully submitted,

LeBOEUF, LAMB, LEIBY & MacRAE
Attorneys for defendant

Dated: New York, New York
December 17, 1976

Jose Rosa
Office and P.O. Address
140 Broadway
New York, New York 10005
(212) 269-1100

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x
UNITED STATES OF AMERICA, :
- against - :
JOSE ROSA, a/k/a Jose Miguel : 76 Cr. 655
Rosa Ortiz, JOSE VEGA, a/k/a :
Jose Hernandez, and RAFAEL A. : AFFIDAVIT OF SERVICE
RODRIGUEZ, :
Defendants. :
- - - - - x

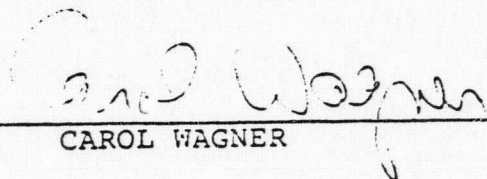
STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

CAROL WAGNER, being duly sworn, deposes and says:

She is above the age of 18 years, resides at 2277
Homecrest Avenue, Brooklyn, New York, and is not a party to
this action.

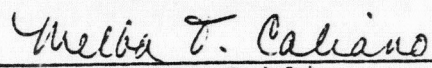
On the 17th day of December, 1976, in the forenoon,
she caused the foregoing Notice of Motion, Affidavit in Support
of Motion and Memorandum of Law in Support of Motion, on behalf
of defendant Jose Rosa, to be served upon the parties in the
above action, through their attorneys, by depositing with respect
to same true copies thereof in securely sealed postpaid wrappers,
into a regularly maintained United States Postal Service letter
box located in the lobby of 140 Broadway, City, County and State
of New York.

Deponent further states that at the time of such service she knew the said names and addresses to be the correct names and addresses as designated in prior papers and proceedings heretofore had.


CAROL WAGNER

Sworn to before me this

17th day of December, 1976


Notary Public

MELBA T. CALIANO
Notary Public, State of New York
No. 4638974
Qualified in Kings County
Commission Expires March 30, 1978

REPORT OF INVESTIGATION

PAGE 1 OF 3

FILE TITLE ROSA, Jose	IDENTIFIER DA4-H3 PROGRAM CODE	FILE NUMBER CI-76-0137 (Grp.33)
☐ ACTIVE ☐ CLOSED ☐ REQUESTED ACTION COMPLETED ☐ ACTION REQUESTED FROM	OTHER OFFICERS Acting G/S M. Levine S/A R. Joura " J. Jones " J. Williams " R. Fiano	CROSS FILE ☐ ☐ ☐ ☐ ☐ RELATED FILES
BY Emilio Garcia AT Special Agent DATE New York, New York April 6, 1976		

REPORT RE: Arrest of Jose ROSA, Jose VEGA and Rafael RODRIGUEZ and the seizure of approximately 1/8 kilogram of heroin.

SYNOPSIS:

On March 31, 1976, the above defendants were arrested at 244, East 106th Street, apartment 9, New York City, with approximately 1/8 kilogram of heroin, approximately \$5,000.00 in U.S. currency and various narcotic paraphernalia.

DETAILS:

1. At approximately 7:45 AM on 3/31/76, S A Richard Fiano was contacted by the DEA Regional Communication center and informed that SCI-6-0032 requested that S/A Fiano or Garcia contact him. At approximately 8:00 AM, S/A Fiano contacted SCI-6-0032. The SCI then informed S/A Fiano that he had spent most of the early morning hours with an individual by the name of Jose ROSA and his partner Jose VEGA and that they had received approximately 1/8 kilo of heroin from a John Doe. The SCI states that ROSA told him that he would cut, pack and distribute the heroin for street sale to his runners before 11:00 AM in the day. ROSA also stated to the SCI that he was going to keep the heroin at his place (244 East 106th Street apt. 9). S A Fiano then instructed the SCI to meet with S/A Garcia at DEA Headquarters as soon as possible.
2. At approximately 9:30 AM, S/A Garcia met with the SCI. The SCI related to S/A Garcia the same information that he stated to S/A Fiano including the fact that he had seen a gun and large sums of money in the apartment. S/A Garcia then instructed the SCI to go back to 244 East and see if the heroin was still in the apartment. A pre-a-

REGION	SIGNATURE (Agent)
DISTRICT	Emilio Garcia - Special
OTHER	APPROVED (Name and Title): Michael Levine - Acting

USA 339-475
(ED. 4-23-71)

Goat

EXHIBIT

U. S. DIST. COURT

S. D. OF N. Y.

3501

REPORT OF INVESTIGATION

PAGE 1 OF 3

FILE TITLE ROSA, Jose		IDENTIFIER DA4-H3	FILE NUMBER CI-76-0137 (Grp.33)
		PROGRAM CODE	
☐ ACTIVE ☐ CLOSED ☐ REQUESTED ACTION COMPLETED ☐ ACTION REQUESTED FROM:	OTHER OFFICERS Acting G/S M. Levine S/A R. Joura " J. Jones " J. Williams " R. Fiano		CROSS FILE ☐ ☐ ☐ ☐ ☐
BY Emilio Garcia AT Special Agent DATE New York, New York April 6, 1976		RELATED FILES	

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2. At approximately 9:30 AM, S/A Garcia met with the SCI. The SCI related to S/A Garcia the same information that he stated to S/A Fiano including the fact that he had seen a gun and large sums of money in the apartment earlier that morning. S/A Garcia then instructed the SCI to go back to 244 East 106th Street, apartment 9, and see if the heroin was still in the apartment. A pre-arranged signal was agreed

REGION	SIGNATURE (Agent) <i>Emilio Garcia</i>	
DISTRICT	Emilio Garcia - Special Agent	
OTHER	APPROVED (Name and Title) <i>Michael Levine</i> Michael Levine - Acting Group Supervisor	DATE 4/14

INVESTIGATION		DATE	PAGE 2 OF 3
(Continuation)		April 6, 1976	
ROSA, Jose	IDENTIFIER	FILE NUMBER	
	DA4-H3	CI-76-0137	
PROGRAM CODE			

upon if the SCI saw the heroin. The SCI was then searched thoroughly by S/A Garcia before leaving DEA Headquarters. At approximately 10:35 AM, surveillance teams established surveillance points in the vicinity of 244 East 106th Street, New York City. At approximately 10:40 AM, S/A Garcia departed DEA Headquarters with the SCI and proceeded to 105th and Third Avenue at which point the SCI exited S/A Garcia's OGV and began walking on foot to 244 East 106th Street. The surveillance units then maintained the SCI under surveillance until he entered 244 East 106th Street, New York City and was lost from sight.

3. At approximately 12:05 PM, the pre-arranged signal was given by the SCI. As the Agents reached apartment 9, they noticed the door was slightly open. The Agents then identified themselves and as they were about to enter ROSA attempted to close the door but was overcome. S/A Garcia and Acting G/S Levine then placed Jose ROSA under arrest along with Rafael RODRIGUEZ, who had Exhibits 10 and 11 on him. S/A Joura then proceeded into the living room and placed Jose VEGA under arrest. VEGA had a .38 calibre revolver underneath the pillow he was sleeping on. S/A Garcia then advised all three (3) defendants of their Constitutional Rights in Spanish and English.

4. Acting G/S Levine then asked the defendants if they were any narcotics in the house. ROSA then stated, "there are, I'll give them to you before you search the place." ROSA then led S/A Garcia and Acting G/S Levine to the bedroom dresser at which point ROSA withdrew a cardboard box containing (Exhibit 1-9) from one of the draws and handed it to S/A Garcia. Rosa then stated "it's all mine." ROSA also stated that he had some money (Exhibit #E) behind the living room sofa. S/A Garcia then asked ROSA if we could search the apartment, ROSA stated, "you can search the apartment as long as you don't break the place up, but you're wasting your time because there's no more stuff." Exhibit C and F were then seized.

5. All three (3) defendants were then transported to DEA Headquarters for processing and lodged in the Metropolitan Correctional facility until the following day when they were arraigned before U.S. Magistrate Raby who set bail at \$1,000.00 for each defendant.

DESCRIPTION AND CUSTODY OF EVIDENCE:

Exhibit 1 through 9 were seized by S/A Garcia on 3/31/76 from the bedroom dresser of apartment 9 at 244 East 106th Street, New York City. S/A Garcia transported the Exhibits to DEA Headquarters and relinquished custody of the Exhibits to S/A Fiano who weighed, sealed and initialed the Exhibits in the presence of S/A Dolan. The Exhibits were placed in the overnight vault until they were submitted to the Northeast Regional Laboratory for analysis.

DEA Form - 6a
(Aug. 1973)

OFFICIAL USE ONLY

Drug Enforcement Administration
Department of Justice

This report is the property of the Drug Enforcement Administration
Neither it nor its contents may be disseminated outside the agency to which loaned.

A-45

IGATION

DATE

Continuation)

April 6, 1976

PAGE 3 OF 3

ROSA, Jose

IDENTIFIER

FILE NUMBER

DA4-H3

C1-76-0137

PROGRAM CODE

Exhibit 10 and 11 - were seized by S/A Fiano. S/A Fiano transported the Exhibits to DEA Headquarters, S/A Fiano weighed, sealed and initialled the Exhibits in the presence of S/A Dolan. The Exhibits were then left in the overnight vault until the following morning when they were submitted to the Laboratory for analysis.

The Non-Narcotic Exhibits were maintained in the custody of S/A Garcia until they were submitted to the Evidence Custodian on 4/2/76.

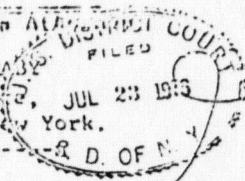
USA 334-473
COMPLAINT - DRUGS, MARIJUANA, HEROIN
JUL 23 1976

Approved:

FREDERICK L. DAVIS
Assistant United States Attorney

Before:

HONORABLE HAROLD J. RAY
United States Magistrate,
Southern District of New York.



UNITED STATES OF AMERICA,

COMPLAINT

-v-

JOSE ROSA, JOSE VEGA, and
RAFAEL ANTONIO RODRIGUEZ,

Violation of
21 U.S.C. §§ 812,
841(a)(1) and
841(b)(1)(A).

Defendants.

SOUTHERN DISTRICT OF NEW YORK, ss:

EMILIO GARCIA, being duly sworn,
deposes and says that he is a Special Agent, Drug
Enforcement Administration, U.S. Department of Justice,

and charges as follows:

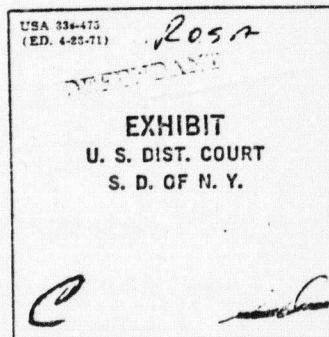
That on or about the 31st day of March, 1976
in the Southern District of New York,

JOSE ROSA, JOSE VEGA, and
RAFAEL ANTONIO RODRIGUEZ,

the defendants, unlawfully, intentionally and knowingly
did distribute and possess with intent to distribute a
Schedule I narcotic drug controlled substance, to wit,
heroin
in violation of Title 21, United States Code, Sections
812, 841(a)(1) and 841(b)(1)(A).

The bases for deponent's knowledge and for the
foregoing charge are, in part, as follows:

1. Investigations in the course of official duties.
2. On March 31, 1976, an informant who had previously provided reliable information told a brother agent in my group that he had been present when two individuals named Jose had purchased one eighth of a kilogram of heroin on March 30, 1976, at 244 E. 106 Street, top floor. The two individuals told the informant that they would sell this heroin in the early hours of March 31, 1976.



GPO: 1972 O - 487-734

FPI 11-1-28-76-25M-5318

USA 83-332 - COMPLAINT - DEFEND: ROSS, WARE, DRUG
NOV 2 4 1976

Approved:

FREDERICK T. DAVIS
Assistant United States Attorney

Before:

HONORABLE HAROLD J. RABINOWITZ
United States Magistrate
Southern District of New York.

FILED
JUL 23 1976

S. D. OF N. Y.

UNITED STATES OF AMERICA,

COMPLAINT

-v-

JOSE ROSA, JOSE VEGA, and
RAFAEL ANTONIO RODRIGUEZ,

Violation of
21 U.S.C. §§ 812,
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Defendants.

SOUTHERN DISTRICT OF NEW YORK, ss:

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That on or about the 31st day of March, 1976
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JOSE ROSA, JOSE VEGA, and
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in violation of Title 21, United States Code, Sections
812, 841(a)(1) and 841(b)(1)(A).

The bases for deponent's knowledge and for the
foregoing charge are, in part, as follows:

1. Investigations in the course of official duties.
2. On March 31, 1976, an informant who had previously provided reliable information told a brother agent in my group that he had been present when two individuals named Jose had purchased one eighth of a kilogram of heroin on March 30, 1976, at 244 E. 106 Street, top floor. The two individuals told the informant that they would sell this heroin in the early hours of March 31, 1976.

A-47

3. On March 31, 1976, Deponent and other agents entered the apartment at 244 E. 106 Street and found the defendants Rosa, Vega and Rodriguez. Rosa stated that he had a quantity of narcotics, and produced approximately three ounces (gross weight) of heroin contained in retail packages. Deponent also found in the apartment approximately \$5,000 in cash and (in the living room) numerous narcotics paraphernalia, such as mixing agents and spoons. The defendant Vega was found sleeping in the living room; under his pillow was a gun. Deponent also arrested the defendant Rodriguez and found on his possession a package of approximately one-quarter ounce of heroin.

WHEREFORE, deponent prays that a warrant may issue for the apprehension of the above named defendants and that they may be arrested and imprisoned, or bailed, as the case may be.

Emilio Garcia

EMILIO GARCIA

S/A DEA, U.S. DEPT. OF JUSTICE

Sworn to before me this
1st day of April, 1976.

Harold J. [Signature]
HAROLD J. [Signature]
United States Magistrate
Southern District of New York

01-76-0137

New York, New York

3/31/70

1	Heroin	169 aluminum foil packets containing brown powder, each weighing approximately .5 gms further contained in Exhibit A.	75.5 gms	75.5 gms	N/A
---	--------	---	----------	----------	-----

13. IS ANY OF THE FOLLOWING SEPARATED SEPARATE FROM DRUG? ☐ NO (Include Alcohol) ☒ YES (If Yes, enter percentage and describe other components fully)

Exhibit #1 was seized by S/A Garcia on 3/31/76 from the bedroom dresser in apartment 9 at 244 East 106th. street, New York, New York. S/A Garcia transported Exhibit #1 to DEA Headquarters at 555 West 57th. Street, New York, New York and relinquished custody of Exhibit #1 to S/A Fiano who weighed, sealed and initialed Exhibit #1 in the presence of S/A Dolan. Exhibit #1 was placed in the night depository for safe keeping.

AGENT (Signature)

LABORATORY EVIDENCE

LABORATORY ANALYSIS / COMPARISON REPORT

Drug Code 9203

Ex. #1 - contains heroin, precaine and sugar. Received 169 foil wrappers.

Gross weight 75.84 gms. Net weight 18.70 gms.

24. Lab. No.		25. ACTIVE DRUG INGREDIENT (Established or Common Name)	WEIGHT PER UNIT ANALYZED	
			26. Strength	27. Measure
1	26637	Heroin (calc as the Hydrochloride)	17.3	percent
<i>Gladstone A. Griffith</i> <i>Lab. Dir.</i>				

USA 33s-475-
(ED. 4-23-71)

Rosa.

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

BEST COPY AVAILABLE

RGSA, Jose et al

DA4-H3

01-76-0137

New York, New York

3/31/76

1	Heroin	169 aluminum foil packets containing brown powder, each weighing approximately .5 gms further contained in Exhibit A.	75.5 gms	75.5 gms	N/A
---	--------	---	----------	----------	-----

13. WAS ORIGINAL CONTAINER SUBMITTED SEPARATE FROM DRUG? ☐ NO (Indicate where) ☒ YES (If Yes, enter exhibit no. and describe original container fully)

Remarks: Exhibit #1 was seized by S/A Garcia on 3/31/76 from the bedroom dresser in apartment 9 at 244 East 106th. street, New York, New York. S/A Garcia transported Exhibit #1 to DEA Headquarters at 555 West 57th. Street, New York, New York and relinquished custody of Exhibit #1 to S/A Fiano who weighed, sealed and initialed Exhibit #1 in the presence of S/A Dolan. Exhibit #1 was placed in the night depository for safe keeping.

14. RECEIVED BY SPECIAL AGENT (Signature) *[Signature]* 4/6/76

LABORATORY EVIDENCE - RECEIPT REPORT

15. RECEIVED FROM (Signature & Date) *[Signature]* 4/11/76

LABORATORY ANALYSIS / COMPARISON REPORT 4/15/76

16. LABORATORY AND REMARKS Drug Code 9203

Ex. #1 - contains heroin, procaine and sugar. Received 169 foil wrappers.

Gross weight 75.84 gms. Net weight 18.70 gms.

23. EXHIBIT NO.	24. Lab. No.	25. ACTIVE DRUG INGREDIENT (Established or Common Name)	26. WEIGHT PER UNIT ANALYZED			29. TOTAL NET	30. RESIDUE
			26. Strength	27. Measure	28. Unit		
1	26637	Heroin (calc as the Hydrochloride)	17.3	percent		3.24 cms.	16.76
						32. FILE	
						33. DATE COMPLETED	
						34. LAB LOCATION	
						35. TITLE	
						36. LAB LOCATION	

Gladstone A. Griffith, Chemist
Laboratory Director

4/13/76
New York

Only 1 - PROSECUTOR

A-49

1. NAME OF SUSPECT OR ESTABLISHMENT RUSA, Lopez et al		2. IDENTIFIER DAI-H3	3. FILE NO C1-75-2137
4. HOW OBTAINED (Check) ☐ Purchase ☒ Seizure ☐ Free Sample ☐ Lab. Seizure ☐ Money Washed ☐ Commercial Sample (Non-Criminal) ☐ Unknown		5. WHERE OBTAINED (City, State/Country) New York, New York	6. DATE 3/31/76

Exhibit No.	8. ALLEGED DRUGS	9. MARKS OR LABELS (Describe fully)	APPROX. GROSS QUANTITY	
			10. Seized	11. Submitted
2	Heroin	Aluminum packet containing brown powder further contained in Exhibit A.	27.5gms	27.5gms

13. WAS ORIGINAL CONTAINER SUBMITTED SEPARATE FROM DRUG? ☐ NO (Included above) ☒ YES (If Yes, enter exhibit no. and describe original container.)

REMARKS:

Exhibit #2 was seized by S/A Garcia on 3/31/76 from the bedroom dresser of apartment 9, at 244 East 106th. street, New York, New York. S/A Garcia transported Exhibit #2 to DEA Headquarters and relinquished custody of Exhibit #2 to S/A Fiano who weighed sealed and initialed Exhibit #2 in the presence of S/A Dolan. Exhibit #2 was placed in the night depository for safe keeping.

14. SUBMITTED BY SPECIAL AGENT (Signature) <i>Robert A. Fiano</i>		15. APPROVED BY (Signature & Title) <i>Robert A. Fiano A/G/S</i>	
LABORATORY EVIDENCE RECEIPT REPORT			
16. No. PACKAGES 1	17. RECEIVED FROM (Signature & Title) <i>Robert A. Fiano</i>	18. TITLE S/A	19. SEAL C-1000 Unbroken
20. RECEIVED BY (Signature & Title) <i>James W. Wilson</i>		21. TITLE 4/11/76	22. ANALYSIS SUMMARY AND REMARKS Drug Code 9203

22. ANALYSIS SUMMARY AND REMARKS		Drug Code 9203	
Ex. #2 - contains heroin and procaine.			
Gross weight 27.33 gms. Net weight 1.24 gms.			

23. Exhibit No.	24. Lab. No.	25. ACTIVE DRUG INGREDIENT (Established or Common Name)	WEIGHT PER UNIT ANALYZED			29. TOTAL NET	30. RESERVE
			26. Strength	27. Measure	28. Unit		
2	26538	Heroin (calc as the Hydrochloride)	31.3	percent		0.39gms	1.02 gms

31. ANALYST (Signature) <i>Gladstone A. Griffith</i>	32. TITLE Gladstone A. Griffith, Chemist	33. DATE COMPLETED 4/21/76
34. APPROVED BY (Signature) <i>James W. Wilson</i>	35. TITLE Laboratory Director	36. LAB. LOCATION New York

File 220
4/3/76

1. NAME OF SUBJECT OR ESTABLISHMENT RODA, Jose et al		2. IDENTIFIER 344-#3		3. FILE NO. 01-76-0137	
4. HOW OBTAINED (Check) ☐ Purchase ☐ Seizure ☐ Other (Specify)		5. WHERE OBTAINED (City, State/County) New York, New York		6. DATE 3/31/76	

7. Exhibit No.	8. ALLEGED DRUGS	9. MARKS OR LABELS (Describe fully)	APPROX. GROSS QUANTITY		12. Purchase Cost
			10. Seized	11. Submitted	
3	Heroin	Aluminum foil packet containing eight(8) glassine packets each containing brown powder, further contained in Exhibit A.	31.5gm	31.5gms	N/A

13. WAS ORIGINAL CONTAINER SUBMITTED SEPARATE FROM DRUG? ☐ NO (Included above) ☒ YES (If Yes, enter exhibit no. & describe original container)

REMARKS:
 Exhibit #3 was seized by S/A Garcia on 3/31/76 from the bedroom dresser of apartment 9 at 244 East 106th. street, New York, New York. S/A Garcia transported Exhibit #3 to DEA Headquarters and relinquished custody to S/A Fiano who weighed, sealed and initialed Exhibit #3 in the presence of S/A Dolan. Exhibit #3 was placed in the night depository for safekeeping.

14. SUBMITTED BY SPECIAL AGENT (Signature) <i>[Signature]</i>		15. APPROVED BY (Signature & Title) <i>[Signature]</i> 4/6/76	
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LABORATORY EVIDENCE RECEIPT REPORT

16. No. PACKAGES 1	17. RECEIVED FROM (Signature & Date) <i>[Signature]</i> 4/1/76	18. TITLE Stg
19. SEAL ☒ Broken ☐ Unbroken	20. RECEIVED BY (Signature & Title) <i>[Signature]</i>	21. TITLE 4/1/76

LABORATORY ANALYSIS / COMPARISON REPORT

22. ANALYSIS SUMMARY AND REMARKS **Drug Code 9203**

Ex. #3 - contains heroin, procaine and sugar.

Gross weight 31.62 gms. Netweight 3.30 gms.

23. Exhibit No.	24. Lab. No.	25. ACTIVE DRUG INGREDIENT (Established or Common Name)	WEIGHT PER UNIT ANALYZED			29. TOTAL NET	30. RESERVE
			26. Strength	27. Measure	28. Unit		
3	26639	Heroin (calc as the Hydrochloride)	6.8	percent		0.22 gms.	2.54 gms

31. ANALYST (Signature) <i>[Signature]</i>	32. TITLE Gladstone A. Griffith, Chemist	33. DATE COMPLETED 4/21/76
34. APPROVED BY <i>[Signature]</i>	35. TITLE Laboratory Director	36. LAB. LOCATION New York

DEA Form 10-751 - 7
 (Rev. 1-75)

Copy 1 - PROSECUTOR

1. NAME OF SUBJECT OR ESTABLISHMENT ROSA, JOSE		2. IDENTIFIER DA-113		3. FILE NO. 01-76-0137	
4. HOW OBTAINED (Check) ☐ Free Sample ☐ Lab. Seizure ☒ Purchase ☐ Compliance Sample (Non-Confidential) ☐ Money Flashed ☐ Seizure ☐ Other (Specify)		5. WHERE OBTAINED (City, State/Country) New York, New York		6. DATE 3/11/76	

7. Exhibit No.	8. ALLEGED DRUGS	9. MARKS OR LABELS (Describe fully)	APPROX. GROSS QUANTITY		
			10. Seized	11. Submitted	12. Other
4	Heroin	Aluminum foil packet containing brown powder further contained in Exhibit A	36gms	36gms	

13. WAS ORIGINAL CONTAINER SUBMITTED SEPARATE FROM DRUG? ☐ NO (Included above) ☒ YES (If Yes, enter exhibit no. and describe original container)

REMARKS:
 Exhibit #4 was seized by S/A Garcia on 3/31/76 from the bedroom dresser of apartment 9, 244 East 106th. street, New York, New York. S/A Garcia transported Exhibit #4 to DEA Headquarters and relinquished custody of Exhibit #4 to S/A Fiano who sealed and initialed Exhibit #4 in the presence of S/A Dolan. Exhibit #4 was placed in the DEA night depository for safekeeping.

14. SUBMITTED BY SPECIAL AGENT (Signature) <i>[Signature]</i>		15. APPROVED BY (Signature & Title) <i>[Signature]</i>	
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LABORATORY EVIDENCE RECEIPT REPORT / 1 /

16. No. PACKAGES 1	17. RECEIVED FROM (Signature & Date) <i>[Signature]</i>	18. TITLE <i>[Signature]</i>
19. SEAL ☒ Broken ☐ Unbroken	20. RECEIVED BY (Signature & Title) <i>[Signature]</i>	21. TITLE <i>[Signature]</i>

LABORATORY ANALYSIS / COMPARISON REPORT / 4/22/76

22. ANALYSIS SUMMARY AND REMARKS Drug Code 8220

Ex. #4 - contains sugar. No control substance detected.

Gross weight: 36.23 gms. Netweight 9.55 gms.

23. Exhibit No.	24. Lab. No.	25. ACTIVE DRUG INGREDIENT (Established or Common Name)	WEIGHT PER UNIT ANALYZED			29. TOTAL NET	30. RESERVE
			26. Strength	27. Measure	28. Unit		
4	26640	No controlled substance detected					9.1 gms

31. ANALYST (Signature) <i>[Signature]</i>		32. TITLE Gladstone A. Griffith, Chemist		33. DATE COMPLETED 4/21/76	
34. APPROVED BY <i>[Signature]</i>		35. TITLE Laboratory Director		36. LAB. LOCATION New York	

1. NAME OF SUSPECT OR ESTABLISHMENT FOSEA, Jose, et al			2. IDENTIFIER DA4-H3			3. FILE NO. C1-76-0137(Gp.33)		
4. HOW OBTAINED (Check) ☐ Purchase ☒ Seizure ☐ Free Sample ☐ Lab. Seizure ☐ Money Flashed ☐ Surrendered (Name of Criminal) ☐ Other (Specify)			5. WHERE OBTAINED (City, State/Country) New York, New York			6. DATE 3/31/76		

Exhibit No.	8. ALLEGED DRUGS	9. MARKS OR LABELS (Describe fully)	APPROX. GROSS QUANTITY		Purchase Cost
			10. Seized	11. Submitted	
5	heroin	Brown granular material contained in a plastic baggie, further contained in aluminum foil, further contained in Exhibit A.	40.5 gms.	40.5 gms.	

13. WAS ORIGINAL CONTAINER SUBMITTED SEPARATE FROM DRUG? ☐ NO (Included above) ☒ YES (If Yes, enter exhibit no. and describe original container fully.)

REMARKS:
Exhibit #5 was seized by S/A Garcia on 3/31/76, from the bedroom dresser of Apt. 9, 244 E. 106th Street, New York City. Special Agent Garcia transported Exhibit #5 to DEA Headquarters and relinquished custody of Exhibit #5 to S/A Fiano, who weighed, sealed and initialed Exhibit #5 in the presence of S/A Dohall. Exhibit #5 was placed in the DEA night depository for safekeeping.

14. SUBMITTED BY SPECIAL AGENT (Signature) <i>[Signature]</i>	15. APPROVED BY (Signature & Title) <i>[Signature]</i> A/G/S
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LABORATORY EVIDENCE RECEIPT REPORT

16. No. PACKAGES 1	17. RECEIVED FROM (Signature & Date) <i>[Signature]</i> 4/1/76	18. TITLE S/A
19. SEAL ☐ Broken ☒ Unbroken	20. RECEIVED BY (Signature & Title) <i>[Signature]</i>	21. TITLE 4/1/76

LABORATORY ANALYSIS / COMPARISON REPORT

4/15/76

22. ANALYSIS SUMMARY AND REMARKS Drug Code 9203

Ex. #5 - contains heroin, procaine and sugar.

Gross weight 40.76 gms. Net weight 13.93 gms.

23. Exhibit No.	24. Lab. No.	25. ACTIVE DRUG INGREDIENT (Established or Common Name)	WEIGHT PER UNIT ANALYZED			29. TOTAL NET	30. RESERVE
			26. Strength	27. Measure	28. Unit		
5	26641	Heroin (calc as the Hydrochloride)	39.2	percent		5.46 gms.	11.57 gms.

31. ANALYST (Signature) <i>[Signature]</i>	32. TITLE Gladstone A. Griffith, Chemist	33. DATE COMPLETED 4/14/76
34. APPROVED BY <i>[Signature]</i>	35. TITLE Laboratory Director	36. LAB. LOCATION New York

44-33

1. NAME OF SUSPECT OR ESTABLISHMENT MORRIS, ROSE et al		2. IDENTIFIER DA4-43		3. FILE NO. CL-76-0137	
4. HOW OBTAINED (Check) ☐ Free Sample ☐ Lab. Seizure ☒ Purchase ☐ Informant (FBI or Non-Federal) ☐ Money Flashed ☐ Seizure ☐ Informant (FBI or Non-Federal) ☐ Unknown		5. WHERE OBTAINED (City, State/Country) New York, New York		6. DATE 3/31/76	

Exhibit No.	8. ALLEGED DRUGS	9. MARKS OR LABELS (Describe fully)	10. APPROX. GROSS QUANTITY		
			10. Seized	11. Submitted	Purchase Cost
7	Heroin	Brown granular material contained in aluminum foil, further contained in Exhibit A.	25.5gms	25.5gms	N/A

13. WAS ORIGINAL CONTAINER SUBMITTED SEPARATE FROM DRUG? ☐ NO (Included above) ☒ YES (If Yes, enter exhibit no. & describe original container fully)

REMARKS:
 Exhibit #7 was seized by S/A Garcia on 3/31/76 from the bedroom dresser of apartment 9 at 244 East 106th. street, New York, New York. S/A Garcia transported Exhibit #7 to DEA Headquarters and relinquished custody of Exhibit #7 to S/A Fiano who weighed, sealed and ~~initialed~~ initialed Exhibit #7 in the presence of S/A Dolan. Exhibit #7 was placed in the night depository for safekeeping.

14. SUBMITTED BY SPECIAL AGENT (Signature) <i>Robert A. Fiano</i>		15. APPROVED BY (Signature & Title) <i>Robert A. Fiano A/G/S</i>	
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LABORATORY EVIDENCE RECEIPT REPORT

16. No. PACKAGES 1	17. RECEIVED FROM (Signature & Date) <i>Robert A. Fiano 4/1/76</i>	18. TITLE <i>S/A</i>
19. SEAL ☒ Broken ☐ Unbroken	20. RECEIVED BY (Signature & Title) <i>Robert A. Fiano</i>	21. TITLE <i>4/1/76</i>

LABORATORY ANALYSIS / COMPARISON REPORT

22. ANALYSIS SUMMARY AND REMARKS
 Drug Code 9203
 Ex. #7 - contains heroin hydrochloride and sugar.
 Gross weight 25.81 gms. Net weight 0.99 gms.

23. Exhibit No.	24. Lab. No.	25. ACTIVE DRUG INGREDIENT (Established or Common Name)	26. WEIGHT PER UNIT ANALYZED			29. TOTAL NET	30. RESERVE
			26. Strength	27. Measure	28. Unit		
7	26543	Heroin Hydrochloride	36.6	percent		0.36 gms.	0.60 gms.

31. ANALYST (Signature) <i>Gladstone A. Griffith</i>		32. TITLE Gladstone A. Griffith, Chemist		33. DATE COMPLETED 4/27/76	
34. APPROVED BY <i>Robert A. Fiano</i>		35. TITLE Laboratory Director		36. LAB. LOCATION New York	

33

1. NAME OF ESTABLISHMENT S/A, Jose at 41		2. IDENTIFIER DA4-H3	3. FILE NO. C1-76-1137
4. HOW OBTAINED (Check) ☐ Purchase ☒ Seizure		5. WHERE OBTAINED (City, State, Country) New York, New York	
☐ Free Sample ☐ Lab. Seizure ☐ Money Exchange ☐ Other (Specify Non-Criminal) ☐ Unknown		6. DATE 3/31/76	

7. No.	8. ALLEGED DRUGS	9. MARKS OR LABELS (Describe fully)	10. APPROX. GROSS QUANT.		11. Subst. Rec. Date
			Seized	Subst. Rec.	
8	Heroin	Brown powder contained in two (2) glassine envelopes further contained in aluminum foil further contained in Exhibit A.	24.5gms	24.5gms	N/A

13. WAS ORIGINAL CONTAINER SUBMITTED SEPARATE FROM DRUG? ☐ NO (Included above) ☒ YES (If Yes, enter exhibit no. and describe original container.)

REMARKS:

Exhibit #8 was seized by S/A Garcia on 3/31/76 from the bedroom dresser of apartment 9, 244 East 106th. street, New York, New York. S/A Garcia transported Exhibit #8 to DEA Headquarters and relinquished custody of Exhibit #8 to S/A Fiano who weighed, sealed and initialed Exhibit #8 in the presence of S/A Dolan. Exhibit #8 was placed in the night depository for safekeeping.

14. SUBMITTED BY SPECIAL AGENT (Signature) <i>[Signature]</i>	15. APPROVED BY (Signature & Title) <i>[Signature]</i>
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LABORATORY EVIDENCE RECEIPT REPORT	
16. No. PACKAGES 1	17. RECEIVED FROM (Signature & Title) <i>[Signature]</i>
18. TITLE S/A	19. SEAL ☒ Broken ☐ Unbroken
20. RECEIVED BY (Signature & Title) <i>[Signature]</i>	21. TITLE 4/1/76
LABORATORY ANALYSIS / COMPARISON REPORT / 4/27/76	

22. ANALYSIS SUMMARY AND REMARKS Drug Code 9203

Ex. #8 - contains heroin hydrochloride, procaine and sugar.

Gross weight 24.46 gms. Net weight 0.32 gms.

23. EXHIBIT No.	24. Lab. No.	25. ACTIVE DRUG INGREDIENT (Established or Common Name)	26. WEIGHT PER UNIT ANALYZED			29. TOTAL NET	30. RESERVE
			26. Strength	27. Measure	28. Unit		
8	25544	Heroin (calc as the Hydrochloride)	43.6	percent		0.14gms.	0.13gms.

31. ANALYST (Signature) <i>[Signature]</i>	32. TITLE Gladstone A. Griffith, Chemist	33. DATE COMPLETED 4/27/76
34. APPROVED BY <i>[Signature]</i>	35. TITLE Laboratory Director	36. LAB LOCATION New York

1. SUBJECT OR ESTABLISHMENT Roth, Jose et al	2. IDENTIFIER D24-H3	3. FILE NO. C1-76-0137
4. HOW OBTAINED (CHECK) ☐ Purchase ☒ Seizure ☐ Free Sample ☐ Lab Seizure ☐ Money Flashed ☐ Unknown ☐ (See Remarks - Non Criminal)	5. WHERE OBTAINED (City, State/Country) New York, New York	6. DATE 3/31/76

[illegible]

13. WAS ORIGINAL CONTAINER SUBMITTED SEPARATE FROM DRUG? ☐ NO (Included above) ☒ YES (If Yes, enter exhibit no. and describe original container full.)

REMARKS: Exhibit #9 was seized by S/A Garcia on 3/31/76 from the bedroom dresser of apartment 9, 244 East 106th. street, New York, New York. S/A Garcia transported Exhibit #9 to DEA Headquarters and relinquished custody of Exhibit #9 to S/A PIANO who weighed, initialed and sealed Exhibit #9 in the presence of S/A Dolan. Exhibit #9 was placed in the night depository for safekeeping.

FORWARDED BY SPECIAL AGENT (Signature)

15. APPROVED BY (Signature & Title)

LABORATORY EVIDENCE RECEIPT REPORT

16. No. PACKAGES

17. RECEIVED FROM (Signature & Date)

18. TITLE

IS. SEAL

20. RECEIVED BY (S. 22-24) THE

21. TITLE

LABORATORY ANALYSIS / COMPARISON REPORT

2. ANALYSIS SUMMARY AND REMARKS

Drug Code 8220

Ex. #9 - contains quinine and sugar. No controlled substance detected.

Gross weight 43.59 gms.

Net weight 18.70 gms.

[illegible]

ANALYST (S) 701000

32. TITLE

33. DATE COMPLETED

Gladstone A. Griffith, Chemist

4/27/75

35. TITLE

Laboratory Director

36. LAB. LOCATION

New York - 6

DEA Form - 7
(4-7-1975)

Previous editions are Obsolete.

Copy 1 -- PROSECUTOR

A-57

FILE # 100-100000-100000
Kp 25

1. NAME OF SOURCE OF ESTABLISHMENT ROSA, JOSE ED #1		2. IDENTIFIER DAH-42	
4. HOW OBTAINED (Check one) ☐ Purchase ☒ Seizure ☐ Money Flashed ☐ Unknown		3. FILE NO. C1-76-0137	
5. WHERE OBTAINED (City, State, Country) New York, New York		6. DATE 3/31/76	

Exhibit No.	8. ALLEGED DRUGS	9. MARKS OR LABELS (Describe fully)	10. Seized	11. Submitted
10	Heroin	27 aluminum foil packets containing brown powder, each weighing approximately .5gms further contained in Exhibit B	36.5gms	36.5gms

13. WAS ORIGINAL CONTAINER SUBMITTED SEPARATE FROM DRUG? ☐ NO (Included above) ☒ YES (If Yes, enter exhibit number and describe original container)

REMARKS:
 Exhibit #10 was seized from the left jacket pocket of Rafael Rodriguez in apartment 9, 244 East 106th. street, New York, New York on 3/31/76 by S/A Fiano. S/A Fiano transported Exhibit #10 to DEA Headquarters where S/A Fiano weighed, initialed and sealed Exhibit #10 in the presence of S/A Dolan. Exhibit #10 was placed in the DEA Night depository for safekeeping.

14. SUBMITTED BY SPECIAL AGENT (Signature) <i>[Signature]</i>	15. APPROVED BY (Signature & Title) <i>[Signature]</i> A/G/S
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LABORATORY EVIDENCE RECEIPT REPORT			
16. NO. PACKAGES	17. RECEIVED FROM (Signature & Title) <i>[Signature]</i> 4/1/76	18. TITLE S/H	
19. SEAL ☒ Broken ☐ Unbroken	20. RECEIVED BY (Signature & Title) <i>[Signature]</i>	21. TITLE 4/1/76	

4/22/76

22. ANALYSIS SUMMARY AND REMARKS Drug Code 9203

Ex. #10 - contains heroin, procaine and sugar.

Gross weight 36.71 gms. Net weight 5.70 gms.

Received 27 foil packets.

23. Exhibit No.	24. Lab. No.	25. ACTIVE DRUG INGREDIENT (Established or Common Name)	WEIGHT PER UNIT ANALYZED			29. TOTAL NET	30. RESERVE
			26. Strength	27. Measure	28. Unit		
10	26646	Heroin (calc as the Hydrochloride)	4.5	percent		0.26 gms.	4.87 gms.

32. ANALYST (Signature) <i>[Signature]</i>	32. TITLE Gladstone A. Griffith, Chemist
35. APPROVED BY <i>[Signature]</i>	35. TITLE Laboratory Director
33. DATE COMPLETED 4/22/76	
36. LAB. LOCATION New York	

FILE 17033

1. NAME OF SENDER OR ESTABLISHMENT ROSA, Rosa et al		2. IDENTIFIER DA4-H3		3. FILE NO. C1-75-0137	
4. HOW OBTAINED (Check) ☐ Free Sample ☐ Lab. Seizure ☒ Seizure ☐ Compulsory Sample (Non-Criminal) ☐ Money Flashed ☐ Unknown		5. WHERE OBTAINED (City, State, Country) New York, New York		6. DATE 3/31/76	

Exhibit No.	8. ALLEGED DRUGS	9. MARKS OR LABELS (Describe fully)	APPROX. GROSS WEIGHT IN		Cost
			10. Seized	11. Submitted	
11	Heroin	Aluminum foil packet containing brown powder, further contained in Exhibit B.	24.5gms	24.5gms	N/A

13. WAS ORIGINAL CONTAINER SUBMITTED SEPARATE FROM DRUG? ☐ NO (Included above) ☒ YES If Yes, enter container no. and describe original container.

REMARKS:
Exhibit #11 was seized from the left jacket pocket of Rafael Rodriguez in apartment 9, 244 East 106th. street, New York, New York on 3/31/76 by S/A Fiano. S/A Fiano trans. of Exhibit #11 to DEA Headquarters where S/A Fiano weighed, initialed and sealed Exhibit #11 in the presence of S/A Dolan, Exhibit #11 was placed in the DEA night depository for safekeeping.

14. SUBMITTED BY SPECIAL AGENT (Signature) <i>S. A. Fiano</i>	15. APPROVED BY (Signature & Title) <i>[Signature]</i> A.C./S
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LABORATORY EVIDENCE RECEIPT REPORT	
16. NO. PACKAGES 1	17. RECEIVED FROM (Signature & Title) <i>[Signature]</i> H.D./S
18. TITLE S/A	19. SEAL ☒ Broken ☐ Unbroken
20. RECEIVED BY (Signature & Title) <i>[Signature]</i> H.D./S	21. TITLE 4/1/76

LABORATORY ANALYSIS / COMPARISON REPORT		4/22/76
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22. ANALYSIS SUMMARY AND REMARKS
Drug Code 9203
Ex. #11 - contains heroin, procaine and sugar.
Gross weight 24.57 gms. Net weight 0.94 gms.

23. Exhibit No.	24. Lab. No.	25. ACTIVE DRUG INGREDIENT (Established or Common Name)	WEIGHT PER UNIT ANALYZED			29. TOTAL NET	30. RESERVE
			26. Strength	27. Measure	28. Unit		
11	26647	Heroin (calc as the Hydrochloride)	4.5	percent		0.04 gms.	0.64

31. ANALYST (Signature) <i>[Signature]</i>	32. TITLE Gladstone A. Griffith, Chemist	33. DATE COMPLETED 4/22/76
34. APPROVED BY <i>[Signature]</i>	35. TITLE Laboratory Director	36. LAB. LOCATION New York

1. NAME OF SUSPECT OR ESTABLISHMENT Jose ROSA		2. IDENTIFIER DAL-H3	3. FILE NO. C1-76-0137 (CP-33)
4. HOW OBTAINED (City, State/Country) ☐ Seizure ☒ Free Sample ☐ Money Flashed ☐ Unknown		5. WHERE OBTAINED (City, State/Country) 244 E. 106 Street New York, New York apt 9	
6. DATE 3/31/76			
B. NAME AND DESCRIPTION OF ARTICLES			
A. Card Board Box with various numbers on top, contained Exhibits 1 through 9			
9. REMARKS <i>(Signature: S/A Garcia)</i> Exhibit A was seized from the bedroom dresser of apt 9, 244 E. 106 Street, New York City. Exhibit A was transported to DEA Hqtrs by S/A Garcia and maintained by him until submitted to the evidence custodian on 4/2/76			
10. SUBMITTED BY SPECIAL AGENT (Signature) Emilio Garcia <i>(Signature)</i>		11. APPROVED BY (Signature & Title) Michael Levine, Acting Group Supervisor	
RECEIPT REPORT			
12. NO. PACKAGES 1	13. RECEIVED FROM (Signature & Date) <i>(Signature)</i> 4-2-76		14. FILE 5/1
15. SEAL Broken Unbroken	16. RECEIVED BY (Signature & Date) <i>(Signature)</i> 4-2-76		17. TITLE Custodian
DISPOSITION (FOR EVIDENCE CUSTODIANS USE ONLY)			
18. Date DEA-48	19. Exhibit	20. Authorizing Name	22. Name
23. REMARKS			

1. NAME OF SUBJECT OR ESTABLISHMENT <u>Jose ROSA</u>		2. IDENTIFIER <u>DA4-H3</u>	3. FILE NO. <u>CL-76-0137</u>
4. HOW OBTAINED (Initial) ☐ Purchase ☒ Seizure ☐ Free Sample ☐ Lab Seizure ☐ Money Flashed ☐ Unknown		5. WHERE OBTAINED (City, State/Country) <u>244 E. 106 Street</u> <u>New York, New York apt 9</u>	
6. DATE <u>3/31/76</u>			
7. NAME AND DESCRIPTION OF ARTICLES D <u>\$476 U.S. Currency</u> E <u>\$4,528 U.S. Currency</u>			
9. REMARKS Exhibit D - was seized by S/A Joura and S/A Garica from the front bedroom of 244 E. 106 Street appt apt 9, New York City on 3/31/76. Exhibit E - was seized by S/A Williams and S/A Joura behind the livingroom sofa of apt 9, 244 E. 106 Street, New York City. Both Exhibits were transported to DEA Hqtrs by S/A Joura and placed into evidence envelopes by S/A Dolan and S/A Joura. The Exhibits were maintained in the DEA safekeeping vault until they were submitted to the custodian of non-narcotic evidence by S/A Garcia on 4/2/76			
10. SUBMITTED BY SPECIAL AGENT (Signature & Title) <u>Enilio Garcia</u>		11. APPROVED BY (Signature & Title) <u>Michael Lavine, Acting Group Supervisor</u>	
RECEIPT REPORT			
12. NO. PACKAGES <u>2</u>	13. RECEIVED FROM (Signature & Date) <u>[Signature] 4-2-76</u>		14. TITLE <u>S/A</u>
15. SEAL <u>Intact</u> ☐ Broken	16. RECEIVED BY (Signature & Date) <u>[Signature] 4-2-76</u>		17. TITLE <u>CUSTODIAN</u>
DISPOSITION (FOR EVIDENCE CUSTODIANS USE ONLY)			
18. Date DEA-4B	19. Exhibit	20. Authorizing Name	21. Means of Disposition
23. REMARKS			

1. NAME OF SUBJECT OR ESTABLISHMENT Jose POVA		2. IDENTIFIER DA4-H3	3. FILE NO. C1-76-0137 (92)
4. HOW OBTAINED (Check) ☒ Seizure ☐ Free Sample ☐ Money Financed ☐ Unknown		5. WHERE OBTAINED (City, State, Country) 244 E. 106 Street apt 9 New York, New York	6. DATE 3/3/76

7. NAME AND DESCRIPTION OF ARTICLES F .38 revolver (caliber) serial number 61138 brand name Charter Arms (white metal) <i>2" barrel</i>	
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8. REMARKS
Exhibit F was found underneath the pillow which Jose Vega was sleeping on in the livingroom of 244 E. 106th Street, apt 9 by S/A Joura. S/A Joura then transported Exhibit F to DEA Headquarters and relinquished it to S/A Fiano who maintained custody and placed it into the safekeeping vault until it was submitted to the custodian of non-narcotic evidence on 4/2/76

9. SUBMITTED BY SPECIAL AGENT (Signature) Emilio Garcia <i>[Signature]</i>	10. APPROVED BY (Signature & Title) Michael Levine, Acting Group Supervisor
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11. NO. PACKAGES 1		12. RECEIVED FROM (Signature & Date) <i>[Signature]</i> 4-2-76		14. TITLE <i>[Signature]</i>
13. SEAL Broken Unbroken		15. REPORTED BY (Signature & Date) <i>[Signature]</i> 4/1/76		17. TITLE <i>[Signature]</i>

DISPOSITION (FOR EVIDENCE CUSTODIANS USE ONLY)				
18. Date Disposed	19. Exhibit	20. Authorizing Name	21. Means of Disposition	22. Name

23. REMARKS

Received
6/7/77
for David Blackstone
J. J. Jones
1:32 p.m.

ROBERT B. FISKE JR.